

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CINDY J BARTOLOTTA
Claimant

APPEAL NO. 10A-UI-04288-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEBRA J LYONS
Employer

OC: 06/28/09
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 11, 2010, reference 08, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 3, 2010. Employer participated by Debbie Lyons, Owner; Judith Kurtz, Manager; and Deanne Carner, Co-worker. Although the claimant provided a telephone number at which she could be reached, she did not answer her phone when her number was dialed. A detailed message was left for the claimant on how to participate in the hearing. She did not call in prior to the closing of the record. The record consists of the testimony of Debbie Lyons; the testimony of Deanne Carner; the testimony of Judith Kurtz; and Employer's Exhibits 1-2.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Maid-Rite restaurant in Dubuque, Iowa. The claimant was hired on January 25, 2010, as a part-time employee. On February 11, 2010, the claimant walked off in the middle of her shift. She had been scheduled to work until 4:00 p.m. and she left at 1:40 p.m. She told a co-employee, Deanne Carner, that she was going to leave and leave "for good."

The claimant did call Judith Kurtz, the manager, on Monday. Ms. Kurtz instructed the claimant to call the owner, Debbie Lyons, to discuss her situation. Although the claimant assured Ms. Kurtz that she would call Ms. Lyons, she never did. She did come to pick up her paycheck on Tuesday, February 16, 2010. Ms. Lyons tried to find out what had occurred, but the claimant was loud and boisterous and would not discuss the matter further.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of employment. She walked off the job, in the middle of her shift, and announced that she was leaving and leaving for good. Although she did call the following Monday to see if she was on the schedule, she was told that she needed to speak with Ms. Lyons and to call her right away. The claimant never called Ms. Lyons. The next day, when she picked up her paycheck, she was loud and unwilling to discuss the matter further. The claimant's words and actions on February 11, 2010, and the following Monday and Tuesday, evidence her intent to sever the employment relationship. The claimant did not testify at the hearing. Benefits are denied.

The next issue is overpayment of benefits. Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall

be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for a determination of the overpayment issue.

DECISION:

The decision of the representative dated March 11, 2010, reference 08, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css