

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERI J MAYES
Claimant

APPEAL NO: 07A-UI-03203-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

**OC: 02/25/07 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Nellis Management Company (employer) appealed a representative's March 19, 2007 decision (reference 01) that concluded Teri J. Mayes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that do qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2007. The claimant participated in the hearing with her attorney H. J. Dane. Barbara Morin, a TALX representative, appeared on the employer's behalf. Cindy Annoreno, the area supervisor, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in February 2001. The claimant worked as a full-time general manager at a Davenport, Iowa, location. Annoreno was the claimant's supervisor.

As the general manager, the claimant received a bonus based on her store's profit. In 2006, the claimant earned about a \$10,000 profit. Even though the claimant's store earned a profit, the employer noticed some problems with the claimant's job performance and her inability to meet certain standards. The claimant had no idea the employer was not satisfied with her work performance or that the employer contemplated transferring her to another store.

On January 25, 2007, the employer told the claimant she was going to be transferred to a store in Moline. Since the Moline store had not made a profit in 2006, the claimant concluded she would not receive any bonus if she transferred.

On January 29, 2007, the claimant informed the employer she was quitting as of February 9, 2007, because she would not transfer to the Moline location. The claimant quit because she would lose her bonus and she did not want to drive across the bridge that connected Davenport and Moline.

Immediately after the claimant submitted her resignation, the employer reconsidered the transfer. The employer considered the claimant a good manager and did not want to lose her as a valued employee. On January 30, 2007, the employer told the claimant she would not have to relocate. The employer wanted her to stay as the general manager at her store, but she would have to meet certain conditions to continue her employment. The conditions required her to show improvement in her job performance as it related to consumers rating the store and improving her employee turnover rate.

On January 31, 2007, the claimant informed the employer she could not continue to work for the employer. The claimant declined the employer's continued employment because she lost faith in the employer after the employer told her she had to manage the Moline store. The claimant understood she had to have a balance scorecard at a certain level, but she did not wait to see what the scorecard was because she had already put forth her best effort. The claimant worked until the effective date of her resignation, February 9, 2007.

The claimant established a claim for benefits during the week of February 25, 2007. The claimant filed claims for the weeks ending March 3 through April 7, 2007. The claimant received her maximum weekly benefit amount of \$360.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when she leaves because of a substantial change in the employment. 871 IAC 24.26(1). When the claimant resigned on January 29, she had good cause for quitting. The employer substantially changed her employment by telling her she had to transfer to another store. The very next day, the employer reconsidered transferring the claimant because she was a good manager who just needed to make some improvements. The employer did not accept the claimant's resignation and told the claimant she would not be transferred. However, to continue her employment the claimant had to meet some conditions or make some improvements. The claimant declined continued employment. The only reason the claimant renewed her resignation was because she felt betrayed by the employer when the employer initially planned to transfer her to a non-profit making store. The claimant considered this as a demotion. As a January 30, the employer basically gave the claimant a work improvement plan.

The law presumes a claimant voluntarily quits without good cause when she leaves employment after receiving a reprimand. 871 IAC 24.25(28). The claimant did not appreciate the employer placing her on a work-improvement plan and quit. The claimant quit her employment on

January 31 for compelling personal reasons that do not qualify her to receive unemployment insurance benefits.

The claimant characterized the employer's January 30, 2007 continued employment plan as an offer of work because she had quit on January 29, 2007. In Dico, Inc. v. EAB, 576 N.W.2d 352 (Iowa 1998), the employer was closing its business but continued work was available for employees who wanted to bid on a job with another employer. After the plant closed and claimants who did not bid to work for another employer filed claims for benefits. The employer in Dico, asserted the claimants refused an offer of suitable work and should be disqualified from receiving benefits. The Court held the offer of work was made before the claimants filed a claim, which would not disqualify the claimants from receiving benefits. This case is different from Dico in this employer never attempted to end the claimant's employment and ultimately continuing work was available with the employer with no changes in the claimant's employment. The only catch was that the claimant had to meet certain conditions for her employment to continue. Given the fact the employer reconsidered transferring after the claimant submitted her resignation and here would not change her employment in any way, the Dico case does not apply in this case. The facts in this case establish that the claimant quit her employment ultimately because she did not believe the employer should make her continued employment contingent upon meeting certain conditions or to improve her work performance.. No one knows if the claimant could have met the conditions or if the employer would have continued to work with her if she had not met the conditions. Ultimately, the claimant quit her employment on January 31, 2007, for reasons that do not qualify her to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not qualified to receive unemployment insurance benefits for the weeks ending March 3 through April 7, 2007. The claimant has been overpaid \$2,160.00 in benefits she received for these weeks.

DECISION:

The representative's March 19, 2007 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of February 25, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The

employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending March 3 through April 7, 2007. The claimant has been overpaid and must repay a total of \$2,160.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css