

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRYSTAL V PETERS

Claimant

APPEAL NO. 12A-UI-08644-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMERCIAL RESOURCES INC

Employer

OC: 06/10/12

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Commercial Resources (employer) appealed a representative's July 9, 2012 decision (reference 01) that concluded Krystal Peters (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 22, 2012. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Rachel Hoffman, Human Resources Manager; Bill Burch, General Manager; and Tena Stansberry, Manager of Continental Hotel and Restaurant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 29, 2008, as a part-time concierge/clerk/wait staff. For May 16 through 31, 2012, the claimant inaccurately reported her job duties on her pay record which resulted in the claimant's paycheck being too large. The employer discovered the error and corrected the error by reducing the claimant's paycheck that was issued on June 8, 2012. On June 8, 2012, the claimant quit work by sending an e-mail. She did not appear for work after June 8, 2012. She quit due to the correction in her paycheck and because she thought she should have had a larger raise. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(13) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She resigned by e-mail and stopped appearing for work. When an employee quits work because she is dissatisfied with her wages and knew the rate of pay when hired, her leaving is without good cause attributable to the employer. The claimant left work because she wanted a raise even though she knew the hourly wage when she was hired. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's July 9, 2012 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs