

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY L BESTA**  
Claimant

**APPEAL NO. 14A-UI-06137-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 05/04/14**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 3, 2014, reference 02, decision that allowed benefits and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on July 8, 2014. Claimant Amy Besta participated. Jennifer Boysen represented the employer and presented additional testimony through Linnie Weems. Exhibit One was received into evidence. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

**ISSUES:**

Whether Ms. Besta separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

Whether Ms. Besta was overpaid benefits.

Whether Ms. Besta must repay benefits.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Amy Besta was employed by Kum & Go as a full-time sales associate from September 2013 and last performed work for the employer on April 25, 2014. From October 2013 onward, Ms. Besta worked at the employer's Marion store. Ms. Besta's immediate supervisor was Linnie Weems, Sales Manager. Jennifer Boysen was the General Manager of the Marion store. Ms. Besta's usual work hours were 10:00 p.m. to 6:00 a.m., four or five days per week.

Ms. Besta arrived for work on time at about 9:45 p.m. on April 25, 2014. When Ms. Besta arrived, Mr. Weems and a sales clerk were working at the store. The store had received a

freight shipment and Mr. Weems was working on putting the freight away. Mr. Weems assigned Ms. Besta to do the shift change drawer counting and accounting duties. Ms. Besta has an 18-year-old, moderately intellectually disabled daughter who requires constant supervision, including while Ms. Besta was at work. Ms. Besta has a 17-year-old son. Ms. Besta did not like to leave her disabled daughter in the care of her young son during Ms. Besta's overnight work hours. Ms. Besta had arrangements in place for an ARC volunteer to come stay with her children while she was at work. On the evening of April 25, 2014, the ARC volunteer did not come to Ms. Besta's home. A short while after Ms. Besta arrived for work, she telephoned her son, but her son did not answer. Ms. Besta commented to Mr. Weems that her son was not answering the telephone. After Mr. Besta assisted a customer, she again telephoned her son. Ms. Besta spoke to her son and learned that no one from ARC had come to the home that evening. Ms. Besta's son advised that everything was fine at home. Ms. Besta continued to be concerned. Ms. Besta reported to Mr. Weems that she had been able to get ahold of her son. Ms. Besta told Mr. Weems that could not believe that no one had come to her home that night. Ms. Besta then told Mr. Weems that she did not care if she got fired, but that she was leaving to check on her kids. Ms. Besta left work at about 11:00 p.m. Mr. Weems expected that Ms. Besta would return shortly after checking on her children. Mr. Weems had on several prior occasions allowed Ms. Besta to leave work for a short while to check on her children. Ms. Besta did not return. Mr. Weems made three attempts to reach Ms. Besta, but Ms. Besta did not answer her phone. Mr. Weems did not leave a voicemail message. Ms. Besta did not return to complete her 10:00 p.m. to 6:00 a.m. shift. Though Mr. Weems had already worked a full shift, he stayed to cover Ms. Besta's shift until 4:00 a.m., when another employee arrived for work. Mr. Weems had at no point directed Ms. Besta to leave the workplace and not return. Mr. Weems did not have the authority to discharge Ms. Besta from the employment.

Ms. Besta was next scheduled to work on April 27, 2014, at 2:00 p.m. Ms. Besta did not appear for the shift or notify the employer that she would be absent from the shift.

On the morning of Monday, April 28, Ms. Besta telephoned Ms. Boysen at the workplace. By that time, the employer had already concluded that Ms. Besta had quit the employment.

Ms. Besta established a claim for benefits that was effective May 4, 2014 and received \$1,152.00 in benefits for the period of May 4, 2014 through June 14, 2014.

A fact-finding interview was scheduled for June 2, 2014 at 8:45 a.m. and the parties were properly notified. At the time of the fact-finding interview, the claims deputy contacted the number provided for the employer. A person at the Kum & Go answered. The claims deputy asked for Ms. Boysen. Ms. Boysen did not come to the phone. The phone eventually disconnected on the claims deputy. The employer did not participate in the fact-finding interview beyond a cursory documentation from Talx/Equifax that indicated Ms. Besta had abandoned the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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 the record indicates that Ms. Besta voluntarily quit the employment by walking off the job during her shift on April 25, 2014. The weight of the evidence does not support Ms. Besta's assertion that Mr. Weems ordered her out of the workplace. The weight of the evidence indicates instead that Ms. Besta was concerned about her daughter, left without permission on April 25, purportedly to check on her daughter, and then failed to return to complete the shift. Not only did Ms. Besta miss the shift, but she failed to answer any of Mr. Weems' three phone calls to her. She then was out of contact with the employer over the weekend and was a no-call, no-show for an evening shift on April 27, 2014. The employer reasonably concluded that Ms. Besta had quit the employment. The quit was for personal reasons and was without good cause attributable to the employer. Ms. Besta is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,152.00 in benefits for the period of May 4, 2014 through June 14, 2014. Because the claimant did not receive benefits due to fraud or willful misrepresentation and because employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

**DECISION:**

The claims deputy's June 3, 2014, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to

ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,152.00 in benefits for the period of May 4, 2014 through June 14, 2014. Because the claimant did not receive benefits due to fraud or willful misrepresentation and because employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs