

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMELINE I MORILLO
Claimant

APPEAL NO. 12A-UI-00898-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/18/11
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 19, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 20, 2012. The employer participated by Tony Morrow, store director, and Libby Weber, fuel station director. The employer was represented by Sue Coppola. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Tony Morrow and the testimony of Libby Weber.

ISSUES:

Whether the claimant was separated from her employment for any disqualifying reason; 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 in this case is a retail grocery store that also sells fuel. The store is located in Waterloo, Iowa. The claimant was a part-time fuel station clerk. She was hired on April 9, 2009. Her last day of work was November 3, 2011.

On November 3, 2011, the claimant got into an argument with a customer over a nine or ten cent cash discount on his gas purchase. Tony Morrow, the store director, went to the fuel station in order to defuse the situation. He asked the claimant to go home. He did not terminate the claimant. The claimant went to her car and called her supervisor, Libby Weber, and told her to go to the fueling station. Ms. Weber did so and found out that Mr. Morrow was trying to work things out with the customer and the police, who had also been called to the scene.

On November 4, 2011, the claimant came to workplace and told Ms. Weber that she could not work "there" and handed over her keys. The claimant was still on the work schedule. Work was available had the claimant elected to keep working.

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.

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 was sent home after she and a customer got into an altercation over a cash discount. The store director wanted to defuse the situation. The claimant was not terminated and Mr. Morrow fully expected her to return to work. On November 4, 2011, the claimant told her supervisor that she could no longer work at the store and handed in her keys. Ms. Weber confirmed that the claimant was not terminated and was, in fact, on the schedule to work. The administrative law judge concludes that the claimant intended to sever the employment relationship and did so by turning in her keys and failing to come to work. There was no evidence that there was good cause attributable to the employer for the claimant's quit. Benefits are therefore denied.

The next issue is overpayment of benefits.

Iowa Code § 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 overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated January 19, 2012, reference 01, 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/pjs