

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE A TAUBE
Claimant

APPEAL NO. 13A-UI-14081-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

A S ACQUISITIONS INC
Employer

**OC: 11/17/13
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated December 20, 2013, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone hearing was held on January 15, 2014. The claimant participated personally. The employer participated by Adam Smith, owner. The record consists of the testimony of Sherrie Taube and the testimony of Adam Smith. Official notice is taken of agency records.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer;
Whether the claimant has been overpaid unemployment insurance benefits;
Whether the claimant is required to repay unemployment insurance benefits; and
Whether the employer's account should be charged for unemployment insurance benefits paid.

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 convenience store called "Guppies to Go." The claimant worked for the employer for seven to eight months. She was a cashier and cook. Her last day of work was November 16, 2013. She voluntarily quit her job on November 16, 2013.

When the claimant was initially hired, she worked on the day shift. She was later transferred to the night shift. Approximately two and one half weeks before she quit, the claimant told the employer that she needed to switch to day shift because her daughter was having medical problems. The employer did not have any day hours to give the claimant because other employees were already scheduled for those hours. The claimant was scheduled for one day only. When the claimant asked the manager, Brandy, about her hours, Brandy said that the claimant could now spend time with her family.

The claimant was very upset. When she came to work on November 16, 2013, she was crying and extremely distressed. The claimant got further upset when she felt that Brandy would not speak to her. She quit her job. A few days later she asked for her job back. The employer did not rehire the claimant.

The claimant established an original claim for unemployment insurance benefits with an original claim date of November 17, 2013. She has received unemployment insurance benefits for the weeks ending November 23, 2013, through January 11, 2014. The employer participated in fact finding.

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 claimant is not eligible for unemployment insurance benefits. The evidence showed that it was the claimant who initiated the separation of employment. She was upset because the employer could not move her from the night shift to the day shift so that she could be with her daughter, who needed surgery. She was also upset about her manager's failure to communicate with her over the situation. Although the employer might have done a better job communicating with the claimant, the administrative law judge concludes that this lapse was not so egregious that it constituted an intolerable workplace. It is also significant that the claimant asked for her job back, which would indicate that she made a hasty decision in deciding to quit. The greater weight of the evidence is that the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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 issues 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 Section 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 benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The decision of the representative dated December 20, 2013, reference 02, is reversed. Unemployment insurance benefits shall be withheld until the claimant 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 has been overpaid unemployment insurance benefits. Those benefits must be repaid by the claimant. The employer's account will not be charged.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs