

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISSA MCCLAIN

Claimant

APPEAL NO: 08A-UI-10558-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINDQUIST FORD INC

Employer

**OC: 10/05/08 R: 04
Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Lindquist Ford, Inc. (employer) appealed an unemployment insurance decision dated October 31, 2008, reference 01, which held that Lissa McClain (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 25, 2008. The claimant participated in the hearing. The employer participated through Joni Lindle, Business Development Manager and employer representative Klaren Bentley. General Manager Craig Miller observed the hearing but did not participate. 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.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 employed as a full-time appointment service coordinator from March 10, 2008 through October 10, 2008. Her children had surgery so she had previously arranged to take off work on October 8, 9, and 10, 2008. However, the employer was short-staffed so the claimant said she would try to come in on October 10, 2008. Her children had high fevers so she could not come in but she reported it to the employer.

The claimant had her car in the employer's shop for repairs. One of the service men gave her a rental car since her car was not able to be driven. The claimant assumed the rental car was provided for free since nothing was said to her at the time it was given to her. She called Jodi Lindle, the business development manager on October 10, 2008 asking questions about the bill. The claimant was angry when she learned that the employer was not paying for the rental car. She wanted to get her car but was told she could not get it until she paid for it in full. The claimant responded that it was a bunch of crap.

Ms. Lindle testified the claimant failed to report to work on her next workday, October 13, 2008. Ms. Lindle tried to reach the claimant by telephone but could only leave a message which advised the claimant she would be considered to have abandoned her job if she did not report to work on Tuesday October 14, 2008. The claimant admitted Ms. Lindale did leave her a message on October 13, 2008 but contends she returned the call to Ms. Lindle but could not reach her. The employer has no record of the claimant calling and she did not report to work on October 14, 2008. The claimant was considered to have abandoned her job.

The claimant filed a claim for unemployment insurance benefits effective October 5, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends she was discharged but the evidence does not support that contention. She claimed that Joni Lindle told her on October 10, 2008 that since she broke the rules, she was no longer needed. The rule she purportedly broke was assuming the rental car would be paid for by the employer. That claim does not even make sense. Furthermore, the claimant admitted Ms. Lindle called her on October 13, 2008 and asked her to call her as soon as possible. If Ms. Lindle had discharged the claimant as alleged, it is doubtful that she would have called her on October 13, 2008 wanting to know why she was not at work. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by not calling or reporting to work after October 10, 2008.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an

overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated October 31, 2008, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs