

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA A PACHECO
Claimant

APPEAL NO. 09A-UI-10046-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ESTATE FENCES INC
COUTNRY ESTATE FENCE OF WATERLOO
Employer

Original Claim: 01-04-09
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 30, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 29, 2009. The claimant did participate. The employer did participate through (representative) Charlene Jacobson, CEO, and Dennis Kostman, Manager. Employer's Exhibit One was received.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as a fabricator/laborer, full-time, beginning in March 2006 through June 3, 2009, when she voluntarily quit.

On June 3, 2009, the claimant got angry when her direct supervisor, Dennis Kostman, asked her to tell him where she was on a job she was cutting. The supervisor had a right to ask her where she was in the job. The claimant became angry when asked by the supervisor if it was her last post to cut. The claimant then told Mr. Kostman that it was none of his "fucking business." The claimant began yelling at Mr. Kostman and he told her to go to Ms. Jacobson's office to discuss the situation. The claimant refused to go to Ms. Jacobson's office. Mr. Kostman went to Ms. Jacobson's office to get her to come to the floor. When Ms. Jacobson got to the floor, the claimant was talking on her cell phone and refused to get off the telephone to speak to Ms. Jacobson. The claimant then began yelling at Ms. Jacobson that she was "fucking quitting." The claimant walked out the door and did not return. The claimant returned to the employer later to collect her personal belongings and to pick up her last paycheck. The claimant never asked the employer for her job back.

The claimant had a history of quitting the job and walking off, then later returning to ask for her job back.

The claimant has received unemployment benefits since filing a claim with an effective date of January 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

871 IAC 24.25(6) and (22) provide:

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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

(22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

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).

By yelling at least three times that she was "quitting" and then leaving the work premises, the claimant voluntarily quit her employment. The employer has established that the claimant became angry when asked by the supervisor where she was in a particular job order. The supervisor was within his rights to ask the claimant a question about the job. The claimant's leaving was without good cause attributable to the employer.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

DECISION:

The June 30, 2009, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 is overpaid benefits in the amount of \$1,790.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw