

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY BOLIN
Claimant

APPEAL NO. 08A-UI-04522-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROYAL PROFESSIONAL SOLUTIONS LLC
Employer

**OC: 04/13/08 R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Royal Professional Solutions, LLC (employer), doing business as the Audubon Dairy Queen, appealed an unemployment insurance decision dated May 1, 2008, reference 01, which held that Misty Bolin (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 May 27, 2008. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through owner Guy Blume. Based on the evidence, the arguments of the party, 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 claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time shift leader from approximately January 1, 2008 through April 14, 2008, when she voluntarily quit. The employer suspects the claimant quit because an investigation was being conducted into some missing money.

The claimant filed a claim for unemployment insurance benefits effective April 13, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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 when she stopped reporting to work on April 13, 2008 and carried out that intent by not returning after that.

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. The claimant failed to participate in the hearing and has not satisfied that burden and benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated May 1, 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 claimant is overpaid benefits in the amount of \$552.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw