

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE S JACOBSON**

Claimant

**APPEAL NO. 13A-UI-05121-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINEGARDNER & HAMMONS**

Employer

**OC: 03/31/13**

**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Winegardner & Hammons filed a timely appeal from a representative's decision dated April 22, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that she left work because of working conditions that were detrimental. After due notice was provided, a telephone hearing was held on June 5, 2013. The claimant participated. Participating as witnesses for the claimant were Hans Jacobson, the claimant's husband and Ms. Crystal Derbst, a former co-worker. The employer participated by Ms. Dwanna Wilson, Director of Human Resources and Mr. Sammy Bazuzi. Employer's Exhibits A and B were received into evidence.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Denise Jacobson was employed by Hammons Hotels from February 17, 2010 until September 14, 2012 when she left employment after providing a 32-day advance notice of her intention to leave to return to school. Ms. Jacobson most recently was employed as a housekeeping utility worker on a full-time basis and was paid by the hour. Her immediate supervisor was Beth Kubichi.

On August 12, 2012, Ms. Jacobson provided notice to the employer of her intention to leave her employment effective September 14, 2012. The claimant further stated in her handwritten resignation, "I am going back to school. My class schedule is 8:00 a.m. – 12:00 p.m.-f." Upon leaving her employment Ms. Jacobson completed an associate's separation form identifying "education" as the reason for her voluntary quit. (See Employer's Exhibits A and B) The employer had previously accommodated Ms. Jacobson's desire to continue her education on June 30, 2012, at the claimant's request.

Prior to leaving her employment Ms. Jacobson did not indicate to her supervisor or anyone in management that working conditions stressed or any other factors in connection with her

employment which caused her to leave, if those situations were not changed. Employees are allowed to go up the chain of command with employment concerns, if they feel that their immediate supervisors are not being responsive. Although Ms. Jacobson was aware that she could do so, the claimant did not indicate to her employer that she would be leaving employment if working conditions did not change.

It is the claimant's position that she left her employment due to intolerable and detrimental working conditions. The claimant was dissatisfied with her working conditions because she felt that supervisors at times disseminated confidential information about other workers, that disciplinary actions were not issued in an evenhanded manner, and that the stress related to her work had caused her doctors to suggest that she find a new job, although the claimant had supplied no medical documentation. It is the claimant's position that she made her complaints after leaving employment by accessing a company website used for exit interviews.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

871 IAC 24.25(26) provides:

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 section 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 section 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:

(26) The claimant left to go to school.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in

order to give the employer an opportunity to address or resolve the complaints. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of an intention to quit due to intolerable or detrimental working environments if the employer had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The evidence does not establish that the working conditions were intolerable but it does establish that the claimant's primary reason for leaving her employment was her desire to continue her educational pursuits. The claimant had requested an accommodation to attend school in June 2012 and the employer had accommodated Ms. Jacobson by changing her work classification allowing the claimant to attend scheduled classes at that time. When the claimant tendered her resignation providing 32 days advance notice, Ms. Jacobson cited only her desire to continue her education as the reason for leaving. When completing an exit form while employed by the company, Ms. Jacobson once again indicated only "education" as her reason for quitting her employment although numerous other reasons were available on the form that could have been designated by the claimant.

The evidence in the record also establishes that the claimant did not indicate to the management of Hammons Hotels in advance of her leaving that there were any actions related to her employment that would cause her to quit if they were not rectified by the employer.

The evidence in the record does not establish intolerable or detrimental working conditions or that the claimant provided advance notice to her employer of working conditions that she found unacceptable and would cause the claimant to leave if they were not changed. The claimant left her employment with Hammons Hotels for the primary purpose of continuing her educational pursuits. While this is a good cause personal reason for leaving it is not a good-cause reason attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 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 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 representative's decision dated April 22, 2013, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law. The matter is remanded to the Claims Section for investigation, determination of the overpayment issue.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css