

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CYNTHIA J FRERICKS  
31645 – 180<sup>TH</sup> ST  
CLARKSVILLE IA 50619**

**KIMBERLY A RENFROW  
HILLTOP GARDEN MARKET  
208634 HWY 188  
CLARKSVILLE IA 50619**

**Appeal Number: 05A-UI-11211-HT  
OC: 10/02/05 R: 03  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Hilltop Garden Market (Hilltop), filed an appeal from a decision dated October 21, 2005, reference 01. The decision allowed benefits to the claimant, Cynthia Frericks. After due notice was issued, a hearing was held by telephone conference call on November 16, 2005. The claimant participated on her own behalf and with witness Lisa Busman. The employer participated by Co-Owners Kim Renfrow and John Renfrow.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Cynthia Frericks was employed by Hilltop from

October 18, 2003 until June 15, 2005. She was hired as a full-time florist on a salary of \$480.77 per week for working 40 hours.

During the course of her employment the claimant began working fewer and fewer hours per week until she was only in the shop between 20 and 24 hours per week. In addition, she did not fulfill her other duties, such as working with silk flower arrangements and keeping the display case full.

Co-Owner Kim Renfrow had a difficult time talking to the claimant about her concerns due to the claimant's "attitude." It was finally decided that she would be taken from a salaried to an hourly employee at \$12.00 per hour. Working 40 hours per week the claimant would be earning the same amount of wages.

Ms. Frericks notified Ms. Renfrow she was quitting because of the change in her pay. She did not think she would be getting a full 40 hours because the employer did not like her. However, this was an assumption on her part because no schedule had been set. Ms. Frericks quit before discussing any schedule with the employer.

Cynthia Frericks has received unemployment benefits since filing a claim with an effective date of October 2, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant quit because of the change in her pay structure. However, working 40 hours per week, as she was supposed to do under the provisions of her original contract of hire, there would be no change at all in her earnings. Whatever concerns she had about her schedule were not discussed with the employer and she has no basis in fact to assert she would not be working a full 40 hours.

In addition, Ms. Frericks stated she quit because the employer has made "harassing comments" about her to another employee. However, this occurred 14 months before she quit, and the administrative law judge considers this incident to be too distant in time to be relevant to the separation. The claimant also alleged the employer made harassing comments to customers about them being "pig farmers" and "too cheap" to spend "more than \$20.00 on flowers." While this may be bad for business, it does not constitute good cause attributable to the employer for the claimant to quit.

The reason for the change in her pay structure was because she was not working all the hours she had agreed to work in order to earn her salary. This would be grounds for discharge for failing to work to the best of one's ability. When an employer demotes an employee for misconduct warranting discharge, an employee who subsequently leaves employment does so without good cause attributable to the employer, and is disqualified from receiving

unemployment benefits. Goodwin v. BPS Guard Services, Inc., 524 N.W.2d 28 (Minn. App. 1994).

The record establishes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of October 21, 2005, reference 01, is reversed. Cynthia Frericks is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,626.00.

bgh/kjw