

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL A HORNADAY
Claimant

APPEAL NO. 11A-UI-06026-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC
Employer

**OC: 04/03/11
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Uniparts Olsen, filed an appeal from a decision dated April 29, 2011, reference 01. The decision allowed benefits to the claimant, Angel Hornaday. After due notice was issued a hearing was held by telephone conference call on June 1, 2011. The claimant participated on her own behalf. The employer participated by Human Resources Coordinator Stephanie Bergman and Director of Manufacturing Bradley Miller.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Angel Hornaday was employed by Uniparts Olsen from March 27, 2008 until March 19, 2011 as a full-time laborer. Beginning in November 2010, the claimant became embroiled in a situation with two other employees, Ericka and Tammy, involving the exchange of rude and inappropriate Facebook entries, text messages, and e-mails. Human Resources Manager Becky Meyer counseled each of them separately that such conduct was a violation of the social networking policies of the employer even if the communication exchanges occurred outside the workplace and off the clock. They were advised further disciplinary action could result.

On February 14, 2011, Ms. Meyers again had to counsel Ms. Hornaday and Ericka about more inappropriate exchanges on social media. Ericka then made a complaint about the claimant allegedly trying to run down people she did not like with her fork truck. The claimant denied it and no discipline was issued against her. She then informed Ms. Meyers Ericka had made another posting on her Facebook acknowledging she had been warned about making negative comments regarding Ms. Hornaday but using that opportunity to make another inappropriate remark. Ms. Meyer again counseled Ericka on February 18, 2011, and said any further incidents would result in discharge and the warning was documented in her file.

After that there were no further inappropriate texts, Facebook postings, or e-mails, but the claimant submitted a verbal resignation after that time to her direct supervisor. Her separation date was March 19, 2011.

Angel Hornaday has received unemployment benefits since filing a claim with an effective date of April 3, 20011.

REASONING AND CONCLUSIONS OF LAW:

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 problems with her co-workers. The employer acted promptly to address the complaints, including those against Ms. Hornaday herself. When Ericka made a final "parting shot" on her Facebook page, she was warned again and notified her job was in jeopardy. The postings stopped after this final intervention by the employer, but the claimant still elected to quit.

The employer did everything it was required to do to address the claimant's concerns and the problem stopped. Her decision to quit was therefore without good cause attributable to the employer and she is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of April 29, 2011, reference 01, is reversed. Angel Hornaday is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw