

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L ELLMAN
Claimant

APPEAL NO. 07A-UI-09793-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARTS WAY MFG CO INC
Employer

**OC: 09/16/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 12, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2007. Ms. Ellman participated personally. Participating on her behalf was Ms. Jennifer Bennett-Finn, Attorney at Law. The employer participated by Scott Beattie, Attorney at Law and witnesses Carrie Majeski, Ms. Jean Stensland, and Mr. Kevin Zahrt.

ISSUES:

At issue in this matter is whether the claimant quit employment for good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: Ms. Ellman was employed by Arts Way Manufacturing Company Inc. from May 1978 until August 21, 2007 when she voluntarily quit her employment. Ms. Ellman worked on a full-time basis as a coordinator in an administrative capacity and was paid by salary.

Ms. Ellman voluntarily quit her employment on August 21, 2007 after meeting with company management on two occasions that day. At the conclusion of the second meeting Ms. Ellman said that she was quitting, giving the company two weeks notice. The claimant used two weeks of her vacation time for the notice period that she had provided to the employer that day.

During the months preceding the claimant's leaving, numerous administrative changes had taken place in the company due to a recent company acquisition. A number of key employees had left and/or had been placed in different positions during this period of transition. The claimant's immediate supervisor who had previously performed scheduling had also been placed in a different position and the claimant had been assigned to perform a number of that

individual's job duties along with her own duties. In addition, the company had just implemented a new computer system and was experiencing numerous and varied problems with its implementation. In an effort to fill the position of scheduler that had been left open by the claimant's supervisor's reassignment, the employer offered Ms. Ellman the job position. The claimant rejected the initial offer indicating that the increase pay was not sufficient. The claimant had indicated to the company management that she would require an annual salary of \$40,000.00 in order to perform the duties of scheduler.

Based upon increasing difficulties in performing her duties and the additional temporary duties that had been assigned to her, Ms. Ellman went to Ms. Stensland on two occasions. The first meeting the claimant was upset at the temporary job responsibilities and indicated all the difficulties that she was experiencing. Ms. Stensland was sympathetic, indicating that everyone in the company was experiencing extreme difficulties due to the changes in the new computer system. The employer offered to provide Ms. Ellman assistance and assigned a clerical assistant to work with Ms. Ellman. The assistant later reported that the claimant had been unwilling to teach the assistant the company's new computer system. Subsequently Ms. Stensland met again with the claimant in early August 2007 and at that time made the offer of the scheduler's position to the claimant, offering \$32,000.00 annually. Upon returning after speaking with her husband, Ms. Ellman stated that she would accept the position at \$40,000.00, indicating that she could do the job.

During the transition period the employer was attempting to fill production orders and make do with the employees and computer resources that were available. During the first management meeting on August 21, 2007, the company's General Manager "Swede" Mullenhausen showed the claimant in the presence of others a stack of papers and specifically indicated that Ms. Ellman needed to get these orders implemented into the computer so that an overseas production order could be filled. Ms. Ellman suggested that the subject would be more appropriately handled in a meeting where only it was related to that aspect were present. During the second meeting "Swede" again asked Ms. Ellman to make sure that the work was done and the claimant responded for the second time that day, "You know what it will take to get it in," referring to her position that she would require a \$40,000.00 annual salary to assume the scheduler's position. It appears that when "Swede" emphasized the necessity of fulfilling the duties even while the claimant maintained the temporary position the claimant who felt that Mr. Mullenhausen was acting intimidating stated, "You can do my job too," whereupon the claimant quit her employment.

REASONING AND CONCLUSIONS OF LAW:

The evidence is undisputed in this case that at the time Ms. Ellman left her employment with Arts Way Manufacturing Company Inc. the company was in a substantial transition period where numerous employees had left or were changing positions within the company and the company at the same time was implementing a new computer system with extreme difficulty. Because the claimant's immediate supervisor had left his position, the claimant was required to temporarily assume some of that person's job duties which compounded the claimant's difficulties in implementing the new computer and keeping up with the workflow that the company expected from her. It appears that the claimant as well as others had complained to the company of the difficulties that they were experiencing in performing their duties because of the above-mentioned factors. When Ms. Ellman went to Ms. Stensland about the complaints about the workflow duties and computer issues, Ms. Stensland was sympathetic and offered and to, and did, provide the claimant with an assistant. The employer was not dissatisfied with Ms. Ellman's performance and her job was not in jeopardy. Subsequently the company renewed its efforts to have Ms. Ellman assume the vacant scheduler's position and offered the claimant a

substantial increase in pay. The claimant would then not be required to perform a number of the duties that had been previously assigned to her in both job positions. Ms. Ellman declined indicating that she would accept the position only if the annual pay were \$40,000.00. The company renewed its efforts to hire the claimant permanently into the scheduler's position; however, Ms. Ellman steadfastly refused to accept it unless the pay was increased. Production and computer problems continued and issues culminated during two meetings on August 21, 2007. During the initial meeting, in the presence of a number of management individuals, Mr. Mullenhausen with a number of papers or orders in his hand stated that the claimant must get those into the computer. The claimant said, "You know what it takes," in reference to the annual salary expectation that she had set. The claimant also requested that that portion of the meeting be set aside for individuals directly involved in that issue. The employer complied and a second meeting was held with only four management individuals present, including the claimant. Mr. Mullenhausen again asked the claimant "what it would take to get the orders into the computer" and the claimant again responded, "You know what it will take to get it in," referring again to her salary expectation.

It is the claimant's position that Mr. Mullenhausen was angry and demeaning and humiliated her during the meetings. The testimony of other individuals who were present is to the contrary. Kevin Zahrt one of those present testified that Mr. Mullenhausen was conducting himself in his usual semi-boisterous and straightforward manner, and that he observed nothing humiliating or unusual in the meeting. The evidence is undisputed that at the conclusion of the meeting Ms. Ellman relinquished her position with the company, claiming two weeks accrued vacation as her notice period.

The question before the administrative law judge in this case is whether the working conditions at the time of the claimant's leaving were so detrimental to the claimant so as to provide good cause attributable to the employer. It is noted that all company employees were experiencing difficulties of various degrees and various types during this period and that the employer's expectations for many management individuals had escalated at least temporarily. The evidence establishes that the increased duties were temporary in nature and that the employer was actively trying to find a replacement for the open job position. It is also noted that the evidence does not establish that Ms. Ellman had received disciplinary counseling or warning for failure to perform to meet the employer's expectations and her job was not in jeopardy. The administrative law judge also notes that at the time of the meetings with Mr. Mullenhausen and other management individuals the claimant did not complain of the impossibility of the assignments given to her, the difficulty or any other problems or threatened to quit if conditions did not change, but only made reference to her salary demands. When Mr. Mullenhausen did not acquiesce during the meetings on August 21, 2007, the claimant relinquished her position with the company and did not return.

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 24.26(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.

While Ms. Ellman's reason for leaving her employment was undoubtedly good from her personal viewpoint, the administrative law judge concludes for the reasons stated herein that she did not leave due to intolerable or detrimental working conditions but due to general dissatisfaction and the employer's unwillingness to meet a salary demand that she and her husband had set for the claimant to assume the duties of a scheduler on a regular basis. Unemployment insurance benefits are withheld.

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.

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. The claimant is overpaid benefits in the amount of \$2,156.00.

DECISION:

The representative's decision dated October 12, 2007, reference 01, is hereby reversed. The claimant quit her employment under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing the claimant meets all other eligibility requirements. The claimant is overpaid unemployment insurance benefits in the amount of \$2,156.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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