

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY C BRAVO**

Claimant

**APPEAL NO. 13A-UI-12088-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**

Employer

**OC: 09/22/13**

**Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit

Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 16, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 20, 2013. Claimant Amy Bravo participated. Bangone Chanthavong represented the employer and presented additional testimony through Joann Gobell. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUES:**

Whether Ms. Bravo's voluntary quit was for good cause attributable to the employer.

Whether Ms. Bravo has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Amy Bravo was employed by Stream International, Inc., as a full-time customer support professional from February 2013 until September 15, 2013, when she voluntarily quit the employment. Ms. Bravo's regular work hours were 5:00 p.m. to 2:00 a.m., Sunday through Thursday. September 15 was Ms. Bravo's first day back on the job after being gone for 10 days in connection with having wisdom teeth removed and related complications. Ms. Bravo was still not feeling her best when she returned on September 15.

Shortly before Ms. Bravo returned from her time off, the employer had notified Ms. Bravo that she would need to undergo mandatory training upon her return to work. The training was set for September 17 and 18. The training was to begin at 7:00 a.m. and finish at 4:00 p.m.

Shortly after Ms. Bravo began her shift on September 15, she spoke to Joann Gobell, Team Manager, about the upcoming mandatory training and expressed concern about having to report for training at 7:00 a.m. after getting off work at 2:00 a.m. Ms. Gobell told Ms. Bravo that she would work with her regarding her work hours, but that Ms. Bravo would be expected to

participate in the training as scheduled. Ms. Gobell did not specify what she would be willing to do to Ms. Bravo's work hours so that Ms. Gobell would have more than a five-hour break between work and work-related training.

After the conversation with Ms. Gobell, Ms. Bravo concluded that the employer was asking her to work a nine-hour shift and then make do with a five-hour break before reporting for each day of the training. When Ms. Bravo left for lunch, she did not return. Ms. Bravo had decided to leave the employment. The employer attempted unsuccessfully to reach Ms. Bravo on September 15.

On September 16, Ms. Gobell sent Ms. Bravo a text message asking her to come to the workplace to complete an employment termination form. The employer spoke with Ms. Bravo by telephone. At that time, Ms. Bravo expressed concern that she would no longer have a job because her absence would put her over the acceptable number of attendance points. Ms. Gobell asked Ms. Bravo to come speak with her. Ms. Bravo replied that she had a job interview to go with and did not have any time to come speak with Ms. Gobell that day.

Ms. Bravo established a claim for unemployment insurance benefits that was effective September 22, 2013 and received \$2,040.00 in benefits for the period of September 22, 2013 through November 16, 2013.

#### **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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record stops short of establishing intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. The weight of the evidence indicates that the employer told Ms. Bravo on September 15 that the employer would make unspecified adjustments to Ms. Bravo's late night work schedule so that she could have a greater than five-hour break between work and training. Ms. Bravo short-circuited that discussion and quit the employment at her lunch break. A reasonable person would have further engaged in discussion to see what Ms. Gobell had in mind. The

employer gave Ms. Bravo yet another opportunity to reach a reasonable resolution of the matter on September 16, but Ms. Bravo declined to participate in the discussion. Again, a reasonable person would not have been so quick to see bad faith on behalf of the employer.

The weight of the evidence indicates that Ms. Bravo voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Bravo is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Because this decision disqualified Ms. Bravo for unemployment insurance benefits, The \$2,040.00 in benefits that Ms. Bravo received for the period of September 22, 2013 through November 16, 2013 constituted an overpayment of benefits. The matter of deciding whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The Agency representatives October 16, 2013, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is **remanded** to the Agency.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs