

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

KARI L NORDHUES
2433 BIRCHWOOD DR
ASBURY IA 52002-2412

DUBUQUELAND MINI-STORAGE INC
14628 HWY 20
DUBUQUE IA 52003-9244

Appeal Number: 05A-UI-06059-DT
OC: 05/15/05 R: 04
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Dubuqueland Mini-Storage, Inc. (employer) appealed a representative's June 3, 2005 decision (reference 01) that concluded Kari L. Nordhues (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2005. The claimant participated in the hearing. Barb Soppe appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about June 1, 2000. She worked full time as an office assistant in the employer's storage business. Her last day of work was May 13, 2005. She gave her verbal notice of her intention to quit on April 29, 2005. Her stated reasons for quitting were that she needed a break, that she was going to take some time off, and that she might go back to school.

On or about April 20, 2005, the claimant had left a note for Ms. Soppe, the owner and president, expressing some thoughts about the interaction between the two. She felt like Ms. Soppe treated her like a "nobody" or like incompetent because instead of allowing the claimant to do the tasks without direction, Ms. Soppe would give specific directions about what needed to be done when and how. Ms. Soppe did not want the claimant to answer the office phone when Ms. Soppe was in the office, as she wanted to do it herself. The claimant did not like Ms. Soppe to respond that "I am the owner" when asked why things were to be done a certain way. In the note the claimant left for Ms. Soppe, she did not indicate that she was considering leaving, or that there was some specific action that needed to be corrected to prevent her from leaving.

Another concern that led to the claimant's decision to leave was that the claimant's hours over the typically slow late winter/early spring period had dropped from 40 hours to about 32 hours, where in past years her hours had only dropped to about 35 hours over the slow months. However, by approximately mid-April, the claimant's hours had risen back to approximately 39 hours per week.

The claimant established a claim for unemployment insurance benefits effective May 15, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,722.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).

The law presumes a claimant has voluntarily quit with good cause when she quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. The Court in Dehmel cited cases from other jurisdictions that had held wage reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. An hourly reduction, as had occurred for a time in this case, would have had a proportional wage reduction. However, the time and wage reduction would have to be considered as of the immediate time of the quit, not as of a time prior to the quit¹. Based on the reasoning in Dehmel, a 2.5 percent change in the claimant's pay is not substantial for purposes of unemployment insurance benefits. (The difference between 39 hours per week and 40 hours per week is 2.5 percent.) The claimant has not satisfied her burden. Benefits are denied.

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.

¹ If the prior hourly reduction were to be further considered, it would also need to be considered within the context of what the prior pattern of employment had been, i.e., a reduction of hours to 32 hours per week instead of 35 hours per week.

DECISION:

The representative's June 3, 2005 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 13, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,722.00.

ld/pjs