

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

NAOMI F SHIMER
PO BOX 292
WAYNESVILLE MO 65583

MCKENZIE CHECK ADVANCE OF IOWA
C/o TALX UCM SERVICES INC
PO BOX 283
SAINT LOUIS MO 63166-0283

AMENDED

Appeal Number: 04A-UI-09877-S2T
OC: 08/15/04 R: 02
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 Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

McKenzie Check Advance of Iowa (employer) appealed a representative's September 1, 2004 decision (reference 01) that concluded Naomi Shimer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 5, 2004. The claimant participated personally. The employer participated by Brian Johnson, Divisional Director of Operations; and Lori Peercy, Branch Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 10, 2003, as a full-time branch manager. The employer frequently spoke with the claimant about the branch's collections. On or about August 12, 2004, the claimant had a discussion with the employer about the performance of the business. The claimant told the employer if he could find someone to do the job better than herself, the employer should go ahead and hire that person. The employer knew the claimant was under stress due to varying problems with her seven children. The employer asked the claimant if she could carry out the functions of the position considering her problems at home. The claimant said she would consider the question over night.

On August 13, 2004, the claimant told the employer she had too much on her plate and submitted her three-week notice. The employer asked if the claimant would mind working at another location for those three weeks. The claimant said she would work at the other location. Later that day the claimant walked off the job stating the employer was going to pay her less at the new location. The employer was confused because he did not plan to pay her less. He tried to telephone the claimant but could not reach her.

At the hearing, the claimant said she quit work because the employer told her she had to choose between her family and her job. The claimant moved from Des Moines, Iowa, to Waynesville, Missouri, on or about September 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that she intends to quit employment unless the conditions are corrected. The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v.

Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not inform the employer of the working conditions nor that she intended to quit if the conditions were not corrected. Due to the claimant's failure to give the employer notice, there cannot be a finding that she left work with good cause attributable to the employer and, therefore, the claimant is not eligible to receive unemployment insurance benefits.

The claimant has received benefits in the amount of \$1,715.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's September 1, 2004 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$1,715.00.

bas/kjf/kjf