

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADEL ZELLER

Claimant

APPEAL NO. 08A-UI-04631-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OVER COFFEE PRODUCTIONS LC

Employer

**OC: 04/20/08 R: 03
Claimant: Respondent (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Over Coffee Productions, LC (employer) appealed an unemployment insurance decision dated May 12, 2008, reference 01, which held that Adel Zeller (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2008. The claimant participated in the hearing. The employer participated through Mike Tempel, Business Manager and Lori Janusz, Operations Productions Manager. Employer's Exhibits One through Three and Claimant's Exhibit A were admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

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 employed as a full-time HTML programmer from April 9, 2007 through February 15, 2008 when she voluntarily quit. She testified she voluntarily quit because she had repeated difficulties getting paid. On September 8, 2007, the claimant deposited in her bank account a paycheck in the amount of \$560.11. That paycheck was returned on September 14, 2007 for nonsufficient funds and the claimant was charged fees in the amount of \$5.35. She reported the returned paycheck to her employer on September 18, 2007 and was given cash to cover both the paycheck and the added fees on that same date. A second paycheck in the amount of \$760.26 was returned for nonsufficient funds on October 25, 2007 after it was deposited on October 19, 2007. The claimant reported the second returned check and was again given cash by the employer to cover the paycheck and the fees charged to her.

The employer's bank was located in the same building as its office. After the second returned paycheck, the claimant no longer deposited the checks into her account but went straight up to

the employer's bank to cash the paycheck. She was given a paycheck in the afternoon on February 8, 2008 but was unable to cash it that day. When she tried to cash the paycheck on Monday, February 11, 2008, there were nonsufficient funds in the employer's account and she could not cash her paycheck. She testified that she brought it to the attention of the operations production manager but nothing was done about it. The claimant had to borrow funds from her parents and made the decision to quit her employment. She was unable to cash her February 8, 2008 paycheck until February 21, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by submitting her written resignation on February 15, 2008. She testified she quit her employment because she had repeated difficulties getting paid. The employer contends the claimant quit for other reasons but the evidence confirms two of the claimant's paychecks were returned for nonsufficient funds and her February 8, 2008 paycheck could not be cashed when issued as there were nonsufficient funds in the employer's account. In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 2 N.W.2d 332 (Nebraska 1942).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 12, 2008, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css