

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREA L BLINT**  
Claimant

**APPEAL NO. 08A-UI-05496-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EAST WEST STAFFING**  
Employer

**OC: 05/11/08 R: 12**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 6, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 25 and July 15, 2008. The claimant participated personally. The employer was represented by Fred Liddle, Hearings Representative, and participated through Ann Mellinger, On Site Coordinator.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 25, 2006, and worked until May 18, 2007. She was rehired on October 7, 2008, as a full-time temporary display cells contractor assigned to work at The Scott's Company. The employer is a temporary agency.

On May 9, 2008, the claimant was reprimanded for leaving company property during a break to smoke. She was placed on a last chance agreement. The claimant notified The Scott's Company that she would not be at work on May 11, and 12, 2008. On May 13, 2008, the claimant notified The Scott's Company that she quit because she wanted to take another job at a care facility. The Scott's Company notified the employer and the employer removed the claimant's access to the workplace. Later the claimant learned that her husband could not care for her three children if she worked at the care facility.

On May 14, 2008, the claimant appeared in the parking lot of The Scott's Company. Her Scott's supervisor allowed her access to the facility. When the employer learned the claimant was on the grounds, it escorted her off the property. The employer had accepted her resignation and the claimant could apply for rehire.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without 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(37) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She said she was quitting and the employer accepted her resignation. The claimant's separation was not with good cause attributable to the employer. The claimant voluntarily quit work without good cause attributable to the employer. 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.

**DECISION:**

The June 6, 2008, reference 01, representative's decision is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in an amount of \$1,998.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw