

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

KATHERINE SOLT
25142 - 570TH ST
PALMER IA 50571-8608

KUM & GO LC
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04410-BT
OC: 03/19/06 R: 01
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Kum & Go (employer) appealed an unemployment insurance decision dated April 14, 2006, reference 02, which held that Katherine Solt (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 9, 2006. The claimant participated in the hearing. The employer participated through Shelley Kenne, General 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 employed as a sales manager from October 2001

through January 2, 2006, when she voluntarily quit her employment. Although she started part-time, she was working full-time hours at the time of the separation. The claimant was frustrated with the employer anyway because she had to wait over a year for her pay raise. She was scheduled to work Thanksgiving and had Friday off but the employer asked her to work that Friday. The claimant worked on Thanksgiving and knew she would receive time and a half pay for it. She agreed to work Friday only because she knew it would be overtime pay. She worked 9 hours on Friday which added up to 49 hours that week but when her check came two weeks later, she was paid regular time for the extra 9 hours. When she contacted someone in payroll, she was advised she would not get overtime for those hours since she had been paid eight hours of holiday pay on Thanksgiving. The claimant was unaware of this policy and her supervisor was unaware of it also until the claimant made her aware of it. The claimant gave a two-week notice on December 18, 2005, and quit her employment because of the employer's failure to pay wages that were due.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

The claimant quit her employment because the employer failed to pay wages that were due. 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). The employer's policy of not paying overtime during a week in which holiday pay is paid is reasonable. However, the employer's failure to make employees aware of this policy is unreasonable. The claimant only agreed to work overtime because she believed she would be paid overtime wages. She was not aware of any such policy which would prevent that and neither was her general manager aware of such a policy.

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. The claimant has satisfied that burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated April 14, 2006, reference 02, 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.

sdb/kkf