

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLEE LECLAIR
Claimant

APPEAL NO: 08A-UI-00711-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

**OC: 12/09/07 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Annett Holdings, Inc. (employer), doing business as TMC Transportation, appealed an unemployment insurance decision dated January 10, 2008, reference 01, which held that Carolee Leclair (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 February 5, 2008. The claimant participated in the hearing. The employer participated through Joel Cox, Human Resources Manager and Jackie Wiegand, Employer's Representative. Employer's Exhibit One was 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 front-desk clerk from March 28, 2007 through December 7, 2007. The claimant submitted her resignation to the employer in October 2007 with her final work day to be December 7, 2007. That was the date the claimant was supposed to graduate from her truck driving classes. The employer relied upon this resignation and submitted a job request form for the claimant's replacement as far back as October 8, 2007. The job request form clearly states that the claimant "has given her notice. Her last day will be 12/7/2007." The claimant's school started later than she anticipated which would have moved her graduation date further back in December 2007 or January 2008. She subsequently began to deny that she had submitted her resignation. The employer hired her replacement and the claimant worked through the effective date of her resignation. The claimant graduated from truck driving school at the end of January 2008.

The claimant filed a claim for unemployment insurance benefits effective December 9, 2007 and has received benefits after the separation from employment.

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 telling the employer in October 2007 that she was voluntarily quitting and her last day of work would be December 7, 2007. She now denies she resigned and said the employer simply took her off the schedule. However, the effective date of her resignation only had meaning to the claimant. The employer assumed that was when the claimant was starting school but it was actually the date the claimant was supposed to graduate from truck driving school. That can be the only reason why that date was chosen two months earlier by the claimant and it persuades the administrative law judge that the claimant resigned but subsequently wanted to rescind her resignation due to her graduation date moving back. The Iowa Court of Appeals considers it a voluntary quit when a claimant gives notice of resignation which is accepted by the employer, even though the claimant subsequently attempts to withdraw the resignation. Langley v. EAB, 490 N.W.2d 300 (Iowa App. 1992).

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 not satisfied that burden and benefits are denied.

Iowa Code § 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 unemployment insurance decision dated January 10, 2008, 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 \$1,728.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs