

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYLE D KUHL**  
Claimant

**APPEAL NO. 07A-UI-09290-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DILLARD'S INC**  
Employer

**OC: 09/02/07 R: 01  
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Dillard's, Inc. filed an appeal from a representative's decision dated September 26, 2007, reference 01, which held that no disqualification would be imposed regarding Kyle Kuhl's separation from employment. After due notice was issued, a hearing was held by telephone on October 17, 2007. Mr. Kuhl participated personally. The employer participated by John Morrissey, Assistant Store Manager.

**ISSUE:**

At issue in this matter is whether Mr. Kuhl was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kuhl was employed by Dillard's, Inc. from October 16, 2006 until August 15, 2007. He was last employed full time as a sales associate. He quit the employment because his wages were reduced and because he was disciplined for being out of dress code.

When he began working as a sales associate, Mr. Kuhl was paid \$9.00 per hour. He knew he had to meet certain sales goals in order to retain that rate of pay. He did not meet his sales goals for the period from November 28 through March 3. However, his wages were not reduced, as the employer considered the time a learning experience. The next period for review was March 4 through June 2. Prior to July 6, Mr. Kuhl was advised that he had met his sales goals and, therefore, his pay would not be reduced. However, the supervisor had miscalculated his sales. The employer met with Mr. Kuhl on July 6 and advised him that he had not met his

sales goals and that his pay was being reduced to \$8.10 per hour. Mr. Kuhl signed off on the documentation advising him of the pay reduction. The new pay rate was first reflected on the paycheck he received on July 20, 2007. Mr. Kuhl never indicated he intended to quit because of the pay reduction.

On August 15, the employer met with Mr. Kuhl concerning his failure to wear a necktie as required by the dress code. His supervisor had reminded him on several occasions of the need to have his necktie on. Approximately two hours after the disciplinary meeting, Mr. Kuhl quit the employment. Continued work would have been available if he had not quit.

Mr. Kuhl filed a claim for job insurance benefits effective September 2, 2007. He has received a total of \$1,463.00 in benefits since filing his claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). It appears that the primary reason Mr. Kuhl quit was the fact that his wages were reduced. However, he learned of the reduction on July 6 but did not quit until August 15. This was not a situation where he was being paid on commission and did not know what his actual earnings would be until some later point. He knew on July 6 that he was going to be paid \$0.90 per hour less than he had been earning. Moreover, Mr. Kuhl did not tell the employer on July 6 that he intended to quit because of the wage reduction. The administrative law judge concludes that he acquiesced to the employer's actions by remaining in the employment for over one month after being notified of the pay decrease. As such, it did not constitute good cause attributable to the employer for quitting.

Mr. Kuhl contended that he did not trust the employer due to the fact that he was told at one point that his pay would not be decreased and then later told it would be. The earlier statement was based on an error in computing his sales and not an intent to mislead him. Moreover, Mr. Kuhl continued to work for the company even after learning on July 6 that the earlier statement was in error.

Mr. Kuhl was disciplined on the day he quit because of repeated failures to abide by the dress code. He acknowledged that he was not wearing the required necktie on the occasion that prompted the warning. Inasmuch as he was, in fact, in violation of the dress code, the warning was appropriate. An individual who leaves employment after being reprimanded is presumed to have quit for no good cause attributable to the employer. 871 IAC 24.25(28).

After considering all of the evidence, the administrative law judge concludes that Mr. Kuhl's quit was not for good cause attributable to the employer. He acquiesced to the pay change by remaining in the employment and the employer was justified in disciplining him for not wearing a necktie. Inasmuch as the separation was not for cause attributable to the employer, benefits are denied.

Mr. Kuhl has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated September 26, 2007, reference 01, is hereby reversed. Mr. Kuhl quit his employment with Dillard's, Inc. for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Kuhl has been overpaid \$1,463.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw