

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA M HART
Claimant

APPEAL NO. 09A-UI-15867-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 09/27/09
Claimant: Respondent (2-R)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 16, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 4, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Charles Hill, Attorney at Law. William Kelly participated in the hearing on behalf of the employer with witnesses, Andrew Schrader and Ron Rains.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a stocker from August 27, 2008, to September 30, 2009. Her supervisor was Ron Rains.

On September 30, 2009, Rains approached the claimant while she was stocking and told her that she was going to have to pick up the pace or he would have to get someone else to do the job. The claimant was concerned that she was going to be suspended or discharged so she went the human resources coordinator, Andrew Schrader, and said she needed to quit because she was not fast enough. Schrader asked if there was something else the employer could have her do, but the claimant said she needed to quit. She also declined to work out a two-week notice or to finish her shift that day. She completed a voluntary separation form and left work.

The claimant voluntarily quit employment because she felt her job performance was unsatisfactory to the employer. No one asked her to leave and continuing work was available.

The claimant filed for and received a total of \$1,190.00 in unemployment insurance benefits for the weeks between September 27, 2009 and January 9, 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The evidence establishes the claimant voluntarily quit employment. The claimant acknowledged that no one told her that she was discharged.

The unemployment rules provide that a claimant who leaves employment because she felt the employer was dissatisfied with her job performance has quit without good cause attributable to the employer, provided the employer had not requested that she leave and continuing work was available. 871 IAC 24.25(33). This rule applies to the facts of this case, and the claimant is disqualified from receiving benefits.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 16, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css