

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRICIA L KIRTLEY**  
Claimant

**APPEAL NO. 09A-UI-18086-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CSOI CORP**  
Employer

**Original Claim: 10/25/09  
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

CSOI Corporation filed a timely appeal from a representative's decision dated November 23, 2009, reference 01, that held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on January 5, 2010. The claimant participated personally. The employer participated by Mr. Chad Smith, area supervisor.

**ISSUE:**

At issue is whether the claimant voluntarily quit employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Tricia Kirtley was employed by CSOI Corporation, doing business as Knoxville 66 Convenience Store, from August 1, 2000, until October 25, 2009, when she quit employment without notice. Ms. Kirtley last held the position of full-time assistant manager and was paid by the hour. Her immediate supervisor was Randy Williamson, a store manager that had been hired approximately two months before the claimant's leaving.

Ms. Kirtley left her employment due to general dissatisfaction with changes being implemented by new management. The claimant had temporarily assumed the position of store manager after the previous manager had been discharged from employment. Ms. Kirtley elected not to remain in the position of manager, although the position was available to her. Upon reverting to the position of an assistant manager, the claimant was subject to the scheduling implemented by the new store manager.

Ms. Kirtley made a decision to leave her employment after she believed that she would be scheduled to work one to two evenings per week in the future. The company needed a management person to be at the facility during opening hours and closing hours and, as an assistant manager, Ms. Kirtley was going to be assigned to work a portion of the evening hours that were required. The claimant had been hired to work evening hours but had not been required to work

scheduled evening hours for a substantial period of time before new management took over the operation.

Ms. Kirtley did not indicate that she would be quitting employment if the change in working hours was to be implemented. The claimant called on October 25, 2009, and indicated she was quitting effective that day. Ms. Kirtley believed that the employer would contact her after she had quit employment to offer accommodations. After leaving, the claimant supplied a doctor's statement indicating that she had a kidney problem and that it would be beneficial for the claimant to be able to take bathroom breaks when necessary. The claimant had previously worked morning hours with no additional regularly scheduled help under circumstances that would be similar to evening-hour work and had done so without difficulty.

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

The question before the administrative law judge is whether the evidence establishes that the claimant left employment due to a substantial change in the original agreement of hire. It does not.

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 evidence in the record establishes that Ms. Kirtley had been hired to work evenings and had done so for the company in the past. The record also establishes that Ms. Kirtley had been scheduled to work evening hours on numerous occasions and had done so without difficulty. After the claimant declined to accept the permanent position of store manager, the employer was required to hire an outside individual for that position.

The evidence establishes that Ms. Kirtley experienced difficulty accepting management decisions that were being implemented by the new store manager and that the claimant became increasingly dissatisfied. Due to staffing and scheduling requirements, the claimant was informed that in the future she would be required to work one to two evenings per week in a position of full-time assistant manager. Ms. Kirtley did not want to work evenings and indicated her disagreement to the store manager, Mr. Williamson. The claimant, however, did not indicate that she would be quitting employment if her request to stay on day hours were not accommodated. Ms. Kirtley left employment without providing any notice to the employer on October 25, 2009, stating no specific reason for leaving. It appears that the claimant believed that the employer would, for some reason, contact her after she had quit and that her employment dissatisfaction could be resolved at that time and then she could be reinstated. This did not occur.

An individual who leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. No substantial alteration in the conditions of employment have been established. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated November 23, 2009, reference 01, is reversed. Tricia Kirtley is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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