

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

ERICA D WATERS
2740 FLEUR DR APT 109
DES MOINES IA 50321

KWIK SHOP INC
c/o EMPLOYER'S UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-00699-RT
OC: 12/14/03 R: 02
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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Kwik Shop, Inc., filed a timely appeal from an unemployment insurance decision dated January 14, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Erica D. Waters. After due notice was issued, a telephone hearing was held on February 11, 2004, with the claimant participating. Meghan Murphy testified for the claimant. Kate Schnider, Human Resources Specialist, and Sharon Boyer, Assistant Manager, participated in the hearing for the employer. June Cullom was available to testify for the employer, but not called because her testimony was unnecessary and would have been repetitive. The employer was represented at the first part of the hearing by Diane Elkins, and at the second half of the hearing by Jerry Sanders, both of Employer's Unity, Inc. Claimant's

Exhibit A and Employer's Exhibit One were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The initial hearing began on February 11, 2004 when the record was open at 10:09 a.m. and was recessed at 10:29 a.m. All parties agreed to reconvene the hearing at 11:00 a.m. on Friday February 13, 2004. The hearing was reconvened at 11:05 a.m. on Friday, February 13, 2004 and completed when the record was closed at 11:39 a.m.

Diane Elkins, of Employer's Unity, Inc., the representative of the employer, called the administrative law judge at 8:20 a.m. on February 11, 2004 and asked for a continuance because the regularly assigned representative was ill. The administrative law judge denied the request because Ms. Elkins was available to represent the employer from 10:00 a.m. to 10:30 a.m. When the hearing was not completed at 10:30 a.m. it was recessed and reconvened with the approval of all for Friday, February 13, 2004 at 11:00 a.m.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time clerk or associate from May 25 or 26, 2003 until she voluntarily quit effective December 3, 2003. On November 24, 2003, the claimant provided the employer a written resignation as shown at Claimant's Exhibit A with an effective date of December 8, 2003. However, the claimant worked until December 3, 2003 when she was no longer placed on the schedule. On December 4, 2003, the claimant called the employer and said that she was quitting and would not be back at work and that her doctor had told her that she had allergic reactions to the cleaning chemicals.

Sometime in November 2003, the employer had ordered new and different cleaning supplies, which had been recommended by the corporate office. At the same time, the employer had a new employee on the second shift mixing the new cleaning solvents and cleaning the floors with the new cleaning solvents. This person had not been trained in the mixing of the cleaning solvents. The odor of the cleaning solvents was apparent. At that time, the claimant began to get sick at work. She was pale, had problems standing up, did not look healthy, and was nauseous. At first the claimant did not know what was causing this, but noticed that it was only at work that she felt this way. She and a coworker, Meghan Murphy, who also had such symptoms, consulted the Assistant Manager Sharon Boyer on several different occasions. Ms. Boyer's response was that they had to come to work anyway. The claimant even informed Ms. Boyer that she would have to find different work. At one point, when the claimant informed Ms. Boyer that she was not feeling well, Ms. Boyer told the claimant that there was a waste basket nearby and she could use that in to which to vomit. Ms. Boyer did not deal with younger people very well.

The claimant's illnesses at work persisted and she consulted physicians as shown at Claimant's Exhibit A. The diagnosis was chemical exposure to bleach and ammonia at work. The recommendation by the claimant's physician was to avoid such exposure. These consultations began on November 14, 2003 and continued through early December of 2003. As the result of the persistent conditions, the claimant quit. Not all employees were similarly affected.

Pursuant to her claim for unemployment insurance benefits filed effective December 14, 2003, the claimant has received unemployment insurance benefits in the amount of \$1,383.00 as

follows: \$171.00 per week for six weeks from benefit week ending December 20, 2003 to benefit week ending January 24, 2004 and \$150.00 for benefit week ending January 31, 2004 (\$63.00 earnings), \$73.00 for benefit week ending February 7, 2004 (earnings \$140.00). and \$134.00 for benefit week ending February 14, 2004 (\$79.00 earnings).

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is 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.

871 IAC 24.26(2), (3), (4), (6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.
- (6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant testified that some time in November she began to notice illness symptoms while at work, including nausea, pale skin, burning eyes, and other kinds of symptoms as set out in Claimant's Exhibit A and per the claimant's testimony. At first, the claimant did not know what was causing this, but noticed that it was primarily at work. Another coworker, Meghan Murphy was similarly affected. They consulted the Assistant Manager, Sharon Boyer and informed her of the problem and further that the claimant needed to find different work, but Ms. Boyer would respond that they had to come to work anyway. On one occasion, Ms. Boyer told the claimant, when the claimant said she was not feeling well, that she could use the employer's wastebasket. Even Ms. Boyer conceded at the hearing that she did not deal well with younger people. In any event, the employer did not address the claimant's concerns even though the claimant and Ms. Murphy talked to Ms. Boyer on several occasions.

The claimant consulted physicians and learned eventually that her condition was caused by bleach and ammonia exposure at work as shown at Claimant's Exhibit A. Relationship of the claimant's symptoms to her work is confirmed by the testimony of Ms. Boyer. She confirmed that in November 2003 she ordered new cleaning supplies which were recommended by the corporate office and that a new person on the second shift started mixing the chemicals and cleaning the floors without any training. Even Ms. Boyer conceded that she could smell the cleaning supplies. Accordingly, the administrative law judge concludes that the claimant has demonstrated by competent evidence, adequate health reasons to justify her termination and that before quitting she informed the employer of the work related health problem and further informed the employer that she intended to quit unless the problem was corrected or reasonably accommodated. There is sufficient evidence to link the claimant's symptoms to her employment. The employer did not address the claimant's concerns and the claimant's conditions persisted and she quit. Therefore, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer because of employment related illness. Further, the administrative law judge concludes that there is a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental.

Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

Iowa Code Section 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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,383.00 since separating from the employer herein on or about December 3, 2003 and filing for such benefits effective December 14, 2003. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of January 14, 2004, reference 01, is affirmed. Erica D. Waters, is entitled to receive unemployment insurance benefits provided she is otherwise eligible. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

kjf/b