

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARILYN CARD**  
Claimant

**APPEAL NO: 12A-UI-09142-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN DIEST SUPPLY CO**  
Employer

**OC: 07-08-12**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 27, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 22, 2012, and continued on September 24, 2012. The claimant participated in the hearing. Lee Trask, Vice-President of Manufacturing; Carolyn Cross, Personnel Manager; and Attorney Jim Gilliam; participated in the hearing on behalf of the employer. Employer's Exhibits One through Ten were admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production team leader for Van Diest Supply Company from March 16, 2010 to June 21, 2012. At the time of hire the claimant indicated she was available to work any of the employer's three shifts. The claimant was trained on the 7:00 a.m. to 3:30 p.m. shift and was transferred to the 11:00 p.m. to 7:30 a.m. shift effective May 30, 2011. At the time of hire, and throughout her employment, the employer notified the claimant it uses a bidding process whereby every April the employer sends surveys to employees asking what shift they would like to work. Employees are separated by whether they are production employees or production team leaders. The employer then scores each candidate according to their attendance records and puts employees in each position/job category into groups which are then ranked by seniority. The group with the best attendance chooses their shifts first according to seniority. The change goes into effect every Memorial Day Weekend of the year. There were 26 production team leaders in 2011 and, due to her attendance and seniority, the claimant ranked 26 out of 26. Although her first choice was to work first shift, the claimant was available to work the 11:00 p.m. to 7:30 a.m. shift and was able to bid onto that shift. There were 24 production team leaders in 2012 and, due to her attendance and seniority, the claimant ranked 22 out of 24. The claimant was one-half point shy of being in the top attendance group

and consequently she was outbid for first and third shift and was placed on the second shift, her last choice. The claimant was a full-time student at the time, as well as a single mother of three children, aged 14, 11 and 7. Childcare was expensive and that shift would have interfered with her course schedule. The claimant asked if she could move to any other position to be eligible for another shift and offered to take a demotion but the employer did not have any other jobs available for her that would not displace another employee from his/her shift. Additionally, due to business needs, the employer could not give up a production team leader position. The claimant worked May 29, 2012, the first day she was assigned to second shift, and then called in to report she would be absent every day until June 21, 2012, when the employer determined she voluntarily quit her job.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant stated on her application and at the time of hire she was available to work any of the three shifts offered by the employer. The employer also explained its shift bidding system to her when she was hired and the claimant experienced it in 2010 and 2011. While she did not get her first choice of shift she was able to earn her second choice of shift both of those years. This year, however, the claimant's attendance was one-half point below the highest level and that, coupled with her relative lack of seniority, led to her being placed on second shift, which she decided she could not work given the fact she was attending school and has three children. While at first glance this situation might be considered a change in the claimant's contract of hire, the claimant did state she could work any shift offered when she was hired and was fully aware of the employer's yearly shift bidding procedure from the date of hire. The claimant had plenty of advance knowledge regarding the shift bidding program and was never guaranteed or hired for only one shift. After the bidding process took place, the claimant could only count on working that shift for one year before the bidding procedure occurred again and she could land on any other shift. Given the claimant's stated availability, the fact that the employer never guaranteed the claimant a certain shift, and the notice of yearly shift changes provided by the employer, the administrative law judge must conclude the claimant has not demonstrated that there was a change in her contract of hire or that her leaving was attributable to the employer for good cause as that term is defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be

recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The July 27, 2012, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs