

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA KOLB
Claimant

APPEAL NO. 08A-UI-00162-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BFS RETAIL & COMMERSIAL OPS LLC
Employer

OC: 11/11/07 R: 03
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 24, 2007, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 22, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Larry Beirman participated in the hearing on behalf of the employer.

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 full time for the employer as a service manager from June 20, 2007, to October 31, 2007. Larry Beirman, the auto repair store manager, was her supervisor. The claimant was informed and understood that under the employer's work rules, she was allowed five days of bereavement leave for an immediate relative and three for an in-law.

After October 31, the claimant was next scheduled to work on November 3, 6, and 7. On the morning of November 2, the claimant and her husband were notified that her father-in-law was dying. She had already alerted Beirman to her father-in-law's health condition and was told she would be given three days off for bereavement leave. That morning she called and left a message that she would be traveling to Wisconsin and would call again on Saturday. The father-in-law died on the evening of November 2. On November 3, the claimant called and left a message for Beirman that her father-in-law had died, the funeral was on November 6, and she would be returning to work on November 8. The claimant understood that was allowed on the leave policy since she would be taking three scheduled workdays off.

Beirman returned the message later that day and told the claimant that she needed to be back at work on November 7 "if your job is important to you." The claimant was upset by the death of her father-in-law and Beirman's message because she believed she was entitled to take

November 3, 6, and 7 off under the policy and Beirman was telling her she did not have a job if she did not return on November 7. The claimant returned the call and left a message for Beirman that there was no way for her to get back by November 7 and she would just turn in her keys and uniform on Thursday, November 8. Beirman returned the call and told her it was her decision but to call him if she wanted to talk about the situation. Beirman viewed the policy differently than the claimant and believed all the employer had to do was make sure the employee had three consecutive days without work, even if those days included scheduled days off.

For some reason, the claimant did not get Beirman's message about talking about the situation. She came in on Thursday, November 8, turned in her keys and uniform, and left without talking to Beirman. The claimant did not return to employment because she believed she was entitled to take November 3, 6, and 7 off under the policy and Beirman was telling her she did not have a job if she did not return on November 7, which she considered a termination. In fact, the claimant would not have been fired for not reporting to work on November 7.

The claimant filed for and received a total of \$732.00 in unemployment insurance benefits for the weeks between November 11 and December 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a.

In my judgment, Beirman's statement that she needed to report to work if her job was important to her could not be reasonably interpreted, by itself, as a definite discharge. The claimant acted prematurely in calling Beirman back and telling him that she would turn in her keys and uniform. I believe Beirman's testimony that the claimant would not have been discharged for not reporting to work on November 7, but instead, something would have been worked out if they could have talked personally.

The claimant left employment in part because she believed she was not getting the bereavement leave she deserved. Good cause has not been shown for leaving employment on that basis because I believe the issue would have been worked out if there had been personal communication with Beirman before the claimant stated she was bringing in her keys and uniform.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$732.00 in unemployment insurance benefits for the weeks between November 11 and December 1, 2007.

DECISION:

The unemployment insurance decision dated December 24, 2007, reference 02, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs