

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

AMENDED

Appeal Number: 04A-UI-02819-MT
OC: 11/16/03 R: 02
Claimant: Respondent (2R)

LAURA D MULLIN
9636 NW 70TH AVE
JOHNSTON IA 50131

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.

WINTERSTEEN TRUCKING INC
464 F ST
PHILLIPSBURG KS 67661-1922

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.

RANCE AMES
HAHN AND AMES
353 F ST
PHILLIPSBURG KS 67661

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 Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 4, 2004, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 6, 2004. Claimant participated. Employer participated by Rance Ames, Attorney at Law, Ed Wintersteen, President and Christy Davis, Office manager. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 16, 2004. Claimant had given notice to quit for other employment in October 2003. Employer talked claimant into staying longer. Claimant decided to quit effective December 19, 2003. Employer suggested she quit a few days earlier. Claimant complied. Claimant quit because of verbally abusive language of her supervisor. Claimant had a personality conflict with her supervisor. Claimant collected unemployment benefits effective November 16, 2003 through December 16, 2003 the date of her termination even though she was working and receiving full pay.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the claimant quit for good cause attributable to the employer. The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship due to a personality conflict with her supervisor. Claimant's version is not found correct as she has a credibility issue. Claimant's story changed during the hearing. It is also apparent that claimant collected unemployment benefits while working full time. As such, employer's version has greater weight and must be found correct.

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 24.25(2), (21), (22) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

The next issue concerns an overpayment of 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.

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 holds that claimant is overpaid unemployment insurance benefits in the amount of \$2,208.00 pursuant to Iowa Code Section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to a voluntary quit without good cause attributable to employer effective December 20, 2003.

Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has requalified or is otherwise eligible.

DECISION:

The decision of the representative dated March 4, 2004, reference 01, is reversed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$2,208.00 effective December 20, 2003 and forward. This matter is remanded to the claims section to determine whether claimant was able and available for work November 16, 2003 through December 16, 2003 with a decision on the merits and overpayment issues.

mdm\kjfb