

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLE J ESSEX
Claimant

APPEAL NO. 13A-UI-06247-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

OC: 05/05/13
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 2, 2013. Claimant Gayle Essex did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Joyce Kain represented the employer and presented additional testimony through Lester Brewer.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gayle Essex was employed by Titan Tire Corporation as full-time Human Resources Manager from 2011 until April 26, 2013, when she voluntarily quit. On April 16, 2013, Ms. Essex notified Lester Brewer, Operations Manager, that she was giving the employer her two-week notice. The resignation followed a discussion that morning concerning a human resources report. On April 26, Ms. Essex notified the employer that that day would be her last. The employer continued to have work available for M. Essex at the time she separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

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. See 871 IAC 24.25.

Ms. Essex failed to participate in the hearing and thereby failed to present any evidence to establish that her voluntary quit was for good cause attributable to the employer. The evidence in the record indicates a voluntary quit for personal reasons and without good cause attributable to the employer. Ms. Essex is disqualified for benefits until 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 employer's account shall not be charged for benefits.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

DECISION:

The agency representative's May 20, 2013, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs