

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET M DIDIER
Claimant

APPEAL NO. 08A-UI-07724-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AFRO-AMERICAN COMMUNITY
BROADCASTING INC**
KBBF 88.1 FM
Employer

OC: 07/06/08 R: 03
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 21, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 9, 2008. Claimant participated and was represented by Mark Fransdal, Attorney at Law. Employer participated through Louise 'Lou' Porter and was represented by Daniel Holm, Attorney at Law. Claimant's Exhibits 1 through 4 were received. Employer's Exhibits A and B were received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer and if so, whether she is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as an underwriter from February 16, 2007 until June 6, 2008 when she quit. She initially worked part time until April 2007 when her hours increased to full time. She had repeatedly mentioned needing to make \$32,000.00 per year so Porter added a ten percent commission on new underwriting to her hourly wage. Throughout her employment Porter encouraged her to continue to look for a job if she needed more money since the radio station is a non-profit corporation and would never be able to pay her that amount. Porter never told claimant she would be fired if she continued to look for other jobs and allowed her to conduct job searches on station time. The parties had an issue about compensation time related to claimant's graphic design work in March 2008. Eventually Porter worked with the auditor, claimant was paid and the issue was closed but claimant said she would be leaving when school was out and she found something comparable but would no longer perform graphic design work for employer. Porter assured her she would not have to put in compensation time again. Claimant believed she was subject to a hostile work environment and accused Porter and Deborah Berry of being unprofessional in meetings. The triggering event occurred on May 21 during a meeting when Porter said that since claimant was leaving she

would assign two other staff to cross-train for her duties as is consistent with station practice since the station staff is small. Instead of telling Porter she had not intended to resign and had not given notice, claimant typed up a resignation letter setting the separation date as June 6, 2008. (Employer's Exhibit 1) Employer did not set a specific date for the separation and had claimant requested rescission of her resignation, she could have continued working. There was no threat to fire her if she did not resign and claimant did not relay her concerns to the board of directors because Porter's deceased husband was the founder of the station.

Claimant has received unemployment benefits since filing a claim with an effective date of July 6, 2008.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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(6), (13), (21), (22) provides:

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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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

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

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Since claimant's decision to leave and upon what date were essentially over disagreements about management's operational decisions that were well within employer's prerogative, the decision to leave was without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. 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 § 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 § 96.3(7)b is remanded to the Agency.

DECISION:

The August 21, 2008, reference 01, decision is reversed. 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. Claimant is potentially overpaid benefits in the amount of \$2,376.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs