

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

MARLENE REED
416 ADAMS ST
NEW MARKET IA 51646

ADVANCE SERVICES INC
c/o TALX UCM SERVICES
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-05142-HT
OC: 04/03/05 R: 01
Claimant: Respondent (2)

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.

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.

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 - Quit
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer, Advance Services, filed an appeal from a decision dated May 4, 2005, reference 04. The decision allowed benefits to the claimant, Marlene Reed. After due notice was issued a hearing was held by telephone conference call on June 2, 2005. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Office Manager Brandy McFarland, Human Resources Coordinator Karen Beaver, and was represented by TALX in the person of Jessica Meyer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marlene Reed was employed by Advance Services from October 13, 2004 until February 22, 2005. She was assigned to NSKAKS and her last day of work was February 21, 2005.

On February 22, 2005, the client company contacted Advance Services to report Ms. Reed had been no-call/no-show to work that day. Human Resources Coordinator Karen Beaver called the claimant at home to ask why she was not at work. The claimant said she did not want to work there because "there were too many bosses." In a production facility there are many levels of management and she complained she did not like having to take orders from so many different people. Ms. Reed said she would be willing to go back if Steve Brown was her only supervisor and she could stay on the first shift. Ms. Beaver could not promise this but asked why the claimant had not contacted someone at Advance Services earlier, but she had no response.

Marlene Reed has received unemployment benefits since filing a claim with an effective date of April 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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(21) 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 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:

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

The claimant quit rather than continue working for the employer at the client company. She offered no explanation except she did not like having so many different levels of supervisors. This may have been a legitimate concern but she did not bring it to the attention of Advance Services prior to quitting. This is required by Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996). An employee must give the employer notice of the problem and allow a reasonable amount of time for the concerns to be addressed. Only if the employer does not attempt to correct or address the problem would a quit be for good cause attributable to the employer.

Under the present circumstances, Ms. Reed quit without ever telling anyone of her concerns. She is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 4, 2005, reference 04, is reversed. Marlene Reed is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,197.00.

bgh/tjc