

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE ALTMAN
Claimant

APPEAL NO. 07A-UI-10931-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME DEPOT USA INC
Employer

**OC: 10/28/07 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Home Depot USA, Inc. (employer) appealed an unemployment insurance decision dated November 19, 2007, reference 01, which held that Michelle Altman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Angela Rodenburg, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time temporary sales associate on April 17, 2007 at an hourly rate of \$7.25. She passed her first 90 days and was offered a permanent position at an increased pay rate of \$7.75 per hour. The claimant accepted the new position on July 16, 2007 and continued in that capacity until October 26, 2007 when she voluntarily quit. She previously submitted her two-week notice which provided that her last day of work would be November 2, 2007. The claimant complained about her rate of pay to the human resources manager. The human resources manager stated she would check into whether the claimant could receive an out-of-cycle pay increase. The human resources manager was told the claimant could not get the pay increase at that time and she passed that information on to the claimant on October 25, 2007. The claimant did not say anything at the time, but walked off her job shortly thereafter and never returned.

The claimant filed a claim for unemployment insurance benefits effective October 28, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by walking off the job on October 25, 2007 after previously providing a two-week notice to quit. She quit because she was unhappy with her pay rate. The law presumes it is a quit without good cause attributable to the employer when an employee leaves because of the dissatisfaction with the wages but knew the rate of pay when hired. 871 IAC 24.25(13).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated November 19, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times

her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$137.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css