

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

LYDIA M BOWLING
2506 – 28TH ST
ROCK ISLAND IL 61201

INTERSTATE BRANDS CORP
C/O TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05257-HT
OC: 04/03/05 R: 12
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, Interstate Brands, filed an appeal from a decision date May 4, 2005 reference 01. The decision allowed benefits to the claimant, Lydia Bowling. After due notice was issued a hearing was held by telephone conference call on June 3, 2005. The claimant participated on her own behalf. The employer participated by Human Resources Manager Steve Bartholomew.

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: Lydia Bowling was employed by Interstate Brands

from August 22, 1987 until March 30, 2005. She worked as a janitor for the majority of that time. However, she was bumped from her job in that department and in turn, bumped into a job on the production line. She worked on the line for only a few days and did not feel she had received enough training and "could not do the job." However, none of the supervisors ever told her that her work was unacceptable.

She did ask for additional training once or twice and the supervisor said she would try to have the man Ms. Bowling had bumped from the job to come back and help, but nothing ever happened. After that, the claimant did not go to the union, the human resources department or the production manager. She also could have bumped into another job but did not do this, either. Instead she simply walked off the job and told the supervisor she was quitting.

Lydia Bowling 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(33) 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:

- (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant quit because she felt she was not able to do the job into which she had bumped. However, there is nothing in the record to establish that the employer had any problems with the work she was doing. Ms. Bowling did not exercise any of her options of bumping into another job, talking to the union representative or human resources to alleviate her concerns about lack of training. She did not give the employer notice she was going to quit unless her concerns were addressed as required by Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996). The claimant quit without good cause attributable to the employer and 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 01, is reversed. Lydia Bowling 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 \$2,254.00.

bgh/tjc