

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY L ELGIN
Claimant

APPEAL NO. 07A-UI-11243-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WEST DELAWARE CO COMMUNITY
SCHOOL**
Employer

**OC: 11/04/07 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 26, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 19, 2007. Claimant participated and represented by Emily Roth Richardson Attorney at Law. Employer participated by Ron Goerdt, Finance Director; Ron Swartz, Director of Buildings and Grounds; and Gary Besler, Custodian. Exhibits A through E and One through Seven were admitted into evidence.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 2, 2007. Claimant quit due to a conflict with a subordinate employee. Claimant felt she was treated disrespectfully by the subordinate employee. The subordinate had gotten in claimant's face in May of 2007. A meeting was held with the subordinate promising that he would do better. Finally, on September 24, 2007 the subordinate employee failed to follow claimant's orders. Employer was informed of the incident. Claimant confronted the subordinate over the order. There was a misunderstanding over when to take a lunch break. Claimant felt she was being harassed and treated rudely by the subordinate when it was stated, "It fucking didn't matter." The subordinate did use profanity but not toward claimant. The subordinate on September 24, 2007 did not make any threatening gestures or get in claimant's face. To the contrary, the subordinate just walked away. Employer attempted to resolve the conflict by meetings and an offer of conflict resolution. Claimant refused the offer of conflict resolution and instead quit.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a conflict with a subordinate employee. Claimant as a manager was backed up by management. The threatening behavior that happened in May did not occur again. To the contrary, the subordinate just walked away from an argument. Employer's offer of conflict resolution was appropriate. There did not seem any threats of physical violence on September 24, 2007. This is a quit due to a conflict with an employee which is not good cause attributable to employer. Benefits withheld.

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(6) and (21) provide:

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:

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

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

The next issue concerns an overpayment of unemployment insurance benefits.

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 administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$1,540.00 pursuant to Iowa Code section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to a voluntary quit without good cause attributable to employer.

Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has re-qualified or is otherwise eligible.

DECISION:

The decision of the representative dated November 26, 2007, reference 01, is reversed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$1,540.00.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css