

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L BALTZLEY
Claimant

APPEAL NO. 08A-UI-00204-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JKB RESTAURANTS
MCDONALDS**
Employer

**OC: 12/09/07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

McDonald's (employer) appealed a representative's January 3, 2008 decision (reference 01) that concluded Debra Baltzley (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 23, 2008. The claimant participated personally. The employer participated by James Baker, Owner; Joe Roney, Supervisor; and Krystal Hilsenbeck, Restaurant Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 on August 30, 2004, as a part-time crew person. The claimant was not promised a specific number of hours when she was hired. The claimant was absent for health reasons relating to herself and her husband. She provided doctor's excuses for some of her absences. She was also absent for personal reasons. The claimant was working fewer and fewer hours.

In response the employer scheduled the claimant for four days per week rather than five to accommodate the claimant's need for time off. The claimant only worked three days. The employer started scheduling the claimant for three days per week but the claimant responded by only working two days.

The claimant wrote the employer a note stating she was quitting in two weeks because the employer did not give her hours. The claimant's last day of work was October 19, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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(18) 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:

(18) The claimant left because of a dislike of the shift worked.

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). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer she was quitting and stopped appearing for work. When an employee quits work because she is dissatisfied with her hours, her leaving is without good cause attributable to the employer. The claimant left work because she wanted to work more hours but was not available to work the hours the employer gave her. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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 benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 3, 2008 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$420.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs