

building was sold separately. The company was losing money and used up all the excess cash in the company, but it was not facing bankruptcy, foreclosure or calling of bank loans.

Claimant has received unemployment benefits since filing a claim with an effective date of April 17, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left her employment 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). The corporate officer and sole shareholder filed a petition for bankruptcy on behalf of the company because an involuntary bankruptcy petition by its main supplier was a "near mathematical certainty." Under these circumstances, the Iowa Supreme Court held that the president's unemployment was involuntary. Bartelt v. EAB, 494 N.W.2d 684 (Iowa 1993).

Since no bank loans were called, no foreclosure was imminent and there was no discussion of bankruptcy, the decision to sell the business assets and cause claimant's own unemployment was voluntary. Thus, benefits must be 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.

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

#### DECISION:

The September 13, 2005, reference 02, decision is reversed. Claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly

benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$7,750.00.

dml/kjw