

**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**

**NINA M RUBEMEYER  
515 DEWEY AVE APT 2  
DONNELLSON IA 52625-9503**

**B & B EXPRESS INC  
510 S 200 W  
SALT LAKE CITY UT 84101**

**TALX UNEMPLOYMENT SERVICES  
PO BOX 74900  
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-05755-JTT  
OC: 04/30/06 R: 04  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) - Voluntary Quit  
Section 96.3(7) - Recovery of Overpayment

STATEMENT OF THE CASE:

B & B Express filed a timely appeal from the May 25, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 20, 2006. Claimant Nina Rubemeyer participated at the beginning of the hearing, but intentionally terminated her involvement shortly after testimony began. Lucie Reed of Employers Unity/TALX UC eXpress represented the employer and presented testimony through human resources director Tiffany Kahn, owner Ben Trane, maintenance employee Tony Boatwright and cook Janice Mercer. Exhibit One was received into evidence. The administrative law judge took official notice of Agency records regarding benefits disbursed to Ms. Rubemeyer.

## FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nina Rubemeyer was employed by B & B Express as a full-time cook from December 7, 2005 until May 2, 2006, when she voluntarily quit in response to a reprimand.

On May 2, owner Ben Trane received three separate complaints about Ms. Rubemeyer's conduct at the convenience store where she worked. The first call came from cook Janice Mercer. Ms. Mercer had been wrapping silverware when Ms. Rubemeyer told her not to wrap the silverware because Ms. Rubemeyer did not like it wrapped. An assistant manager instructed Ms. Mercer to continue wrapping the silverware. Ms. Rubemeyer then approached Ms. Mercer, told Ms. Mercer, "I told you not to wrap the goddammed stuff," and grabbed the silverware out of Ms. Mercer's hands. Two customers were present and heard Ms. Rubemeyer. Ms. Rubemeyer had previously used profanity in addressing Ms. Mercer, but had not previously escalated her conduct to include physical contact.

The second call to Mr. Trane came from maintenance employee Tony Boatwright. Mr. Boatwright and another employee had been in the process of delivering new ovens to the convenience store. As the men were bringing in the ovens, Ms. Rubemeyer told Mr. Boatwright that she was "not going to use those motherfucking ovens." Mr. Boatwright was directly in front of the deli counter at the time Ms. Rubemeyer uttered the remark. Several customers were also present and heard the remark. Mr. Boatwright continued to perform work at the convenience store for approximately an hour. During that time, Ms. Rubemeyer continued her tirade. Ms. Rubemeyer said that she did "not give a shit" who had directed that the ovens be brought to the store and that she was not going to use "the cocksuckers."

The third call to Mr. Trane came from an assistant manager. The assistant manager reported a complaint she had received from a customer. The customer had ordered pie without meringue. Ms. Rubemeyer had given the customer pie with meringue. When the customer pointed out the mistake, Ms. Rubemeyer used her hand to remove the meringue from the pie.

After receiving the third complaint, Mr. Trane went to the convenience store to speak with Ms. Rubemeyer. Mr. Trane asked Ms. Rubemeyer about the substance of each complaint and Ms. Rubemeyer denied the allegations. Mr. Trane then reminded Ms. Rubemeyer that he had spoken to her two months prior about similar conduct. Mr. Trane had in fact suspended Ms. Rubemeyer for three days at the beginning of March for swearing at and belittling other staff. After the suspension, Ms. Rubemeyer had amended her behavior for a couple weeks, but then went back to her previous conduct. Mr. Trane told Ms. Rubemeyer that her coworkers did not want to work with her because of her abrasive demeanor and behavior. Mr. Trane told Ms. Rubemeyer that if the conduct did not change, he would have to discharge her. Mr. Trane did not intend at that point to discharge Ms. Rubemeyer and had not come to the store to discharge her. Ms. Rubemeyer responded, "I'm not going to change, so you better fire me." Ms. Rubemeyer then walked out and did not return. The employer continued to have work available to Ms. Rubemeyer.

Ms. Rubemeyer established a claim for benefits that was effective April 30, 2006 and has received benefits totaling \$902.00.

Ms. Rubemeyer intentionally terminated her participation in the hearing shortly after Mr. Trane began to give testimony. Ms. Rubemeyer was heard to say, "I ain't got time for this." The administrative law judge then discovered that Ms. Rubemeyer had terminated the call from her

end. Without taking any steps to disconnect Ms. Rubemeyer from the hearing if she had merely stepped away from the phone, the administrative law judge placed the participants on conference hold and dialed Ms. Rubemeyer's telephone number. The line rang, indicating that Ms. Rubemeyer had in fact terminated her participation in the hearing. The administrative law judge left an appropriate message and contact number. The administrative law judge did not hear back from Ms. Rubemeyer.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Rubemeyer voluntarily quit for good cause attributable to the employer. It does not.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25. When an employee quits in response to a reprimand, the employee is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(28).

The evidence in the record indicates that Ms. Rubemeyer quit in response to being reprimanded by Mr. Trane. Ms. Rubemeyer's quit was without good cause attributable to the employer. Ms. Rubemeyer is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her benefit amount, provided she is otherwise eligible. The employer's account will not be charged.

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 Ms. Rubemeyer has received benefits for which she has been deemed ineligible, the \$902.00 in benefits she has received constitutes an overpayment that Ms. Rubemeyer must repay to the Agency.

Even if the record had demonstrated a discharge instead of a quit, the evidence would have supported a conclusion that Ms. Rubemeyer was discharged for misconduct based on repeated use of profanity and/or abusive language in the workplace. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a). An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984).

DECISION:

The Agency representative's decision dated May 25, 2006, reference 01, is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$902.00.

jt/kkf