

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY K KRSEK**  
Claimant

**APPEAL NO. 15A-UI-09184-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUNSHINE ENTERPRISES INC**  
Employer

**OC: 08/03/14**  
**Claimant: Respondent (2/R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.4(3) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 12, 2015, reference 05, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's voluntary quit on July 9, 2015 was for good cause attributable to the employer. After due notice was issued, a hearing was held on September 2, 2015. Claimant Kimberly Krsek participated. Shahid Hadayat represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Four and Department Exhibits D-1, D-2 and D-3 into evidence.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates a liquor/convenience store in Evansdale. Kimberly Krsek was employed by Sunshine Enterprises, Inc., as a full-time cashier from May 18, 2015 until July 9, 2015, when she voluntarily quit. Ms. Krsek asserts several issues that factored in her decision to leave the employment. The final incident that prompted her quit occurred on July 9, 2015. On that day, Ms. Krsek asked to leave work early and sent a text message request to her supervisor, Shahid Hadayat, via text message. Mr. Hadayat replied by text message that he had no one else available to cover the shift. Ms. Krsek sent another text message indicating that the day would be her final day in the employment.

Ms. Krsek cites several issues as factors in her decision to leave the employment. Ms. Krsek asserts that she was having health issues due to the need to be on her feet all day. Ms. Krsek did not provide the employer with any medical accommodations and her quit was not based on advice from a licensed and practicing physician. Ms. Krsek cites the need to provide care to her adult children. Ms. Krsek's eldest daughter is 22 years old and does not live with Ms. Krsek. Ms. Krsek asserts that the daughter has had a stroke. Ms. Krsek also has a 20-year-old daughter who lives with her. Ms. Krsek asserts that her 20-year-old daughter has heart issues. Ms. Krsek asserts that her daughters' health issues made it necessary for her to miss work. Ms. Krsek did not provide the employer with any medical documentation to support her need to be off work to care for her adult children and has not provided any such documentation for the appeal hearing.

Ms. Krsek points to comments made by Mr. Hadayat as a factor in her decision to leave the employment. A couple weeks after Ms. Krsek began the employment, Ms. Krsek was concerned that she had suffered injury in connection with a fall at home. Ms. Krsek felt demeaned when Mr. Hadayat told her that the problem was all in her head. After Ms. Krsek missed work repeatedly for various family issues, Mr. Hadayat told Ms. Krsek that she had been right when she had told him that she had a lot of problems. Ms. Krsek took offense when Mr. Hadayat chastised her for not knowing where a particular product was located.

Ms. Krsek asserts additional reasons for quitting the employment. She did not like that the employer expected her to familiarize herself with the merchandise the employer stocked. Ms. Krsek also did not like that she would have to look up the price of some items in order to ring them up. The employer had a problem with food in a particular display cooler going bad. While Ms. Krsek faults the employer for selling moldy food to customers, Mr. Hadayat expected the clerks to remove expired product from the cooler.

Ms. Krsek also cites an ongoing water leak issue on the floor in an area used by customers as a factor in her decision to leave the employment. The leak existed throughout the employment. The employer concedes there was an ongoing issue, but adds that the employer had twice sought to have the issue repaired.

Ms. Krsek cites insufficiently addressed complaints regarding another employee not getting their work done as a factor in her quit. Ms. Krsek resorted to take photos of the incomplete work that included an empty ice bin, an unkempt fountain soda area, overflowing bottle return area, and an unswept bathroom floor. Ms. Krsek believed that a particular new employee was not performing assigned duties. Ms. Krsek was displeased when Mr. Hadayat declined to take action to reprimand the coworker and instead told Mr. Krsek that all of the employees were responsible for the various cleaning tasks.

Ms. Krsek cites as a factor in her quit an incident wherein a coworker began to experience difficulty breathing and Mr. Hadayat did not immediately respond to the store. Mr. Hadayat lived half an hour away from the store. Mr. Hadayat responded, but not before Ms. Krsek and others had facilitated medical care for the coworker. Ms. Krsek stopped into the store while the event was unfolding and ended up remaining at the store to cover for the ill employee.

Ms. Krsek cites as a concern, but not as a factor in her quit, the employer's practice of having employees take cash from the register as compensation for overtime work in lieu of the employer paying overtime wages.

The employer has a different perspective on Ms. Krsek's quit. Mr. Hadayat asserts that Ms. Krsek quit because she knew she would eventually be discharged from the employment.

Mr. Hadayat believed he had caught Ms. Krsek in a lie about her need for a particular evening off to address an illness issue. Mr. Hadayat later became aware of photos that Ms. Krsek had posted photos to her Facebook page that appeared to show her and her daughter out for the evening of entertainment on the same day. Mr. Hadayat believed he had caught Ms. Krsek not ringing up items her daughter had obtained from the employer's store. Mr. Hadayat asserts he documented the incidents via surveillance. Ms. Krsek asserts she rang up all items and had receipts.

Ms. Krsek established an additional claim for benefits that was effective July 5, 2015 in connection with a claim year that had begun for her on August 3, 2014. Ms. Krsek received \$687.12 in benefits for the period of July 5, 2015 through July 25, 2015 in connection with the additional claim. Ms. Krsek established a new claim year that was effective August 2, 2015. Ms. Krsek has so far received \$1,956.00 in benefits for the period of August 2, 2015 through September 19, 2015. Sunshine Enterprises, Inc., is not a base period employer for purposes of the August 3, 2014 claim year or the August 2, 2015 claim year and has not been charged for benefits paid to the claimant.

On August 11, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Krsek's separation from the employment. Ms. Krsek participated. The employer did not. The employer had received proper notice of the fact-finding interview. The notice of the fact-finding interview does not contain a number for the employer. However, Workforce Development records include 319-429-2856 as the contact telephone number of record. The employer was available at that number, but did not receive a call at the time of the fact-finding interview. At the time of the fact-finding interview, Ms. Krsek told the claims deputy that the owner was always upset with her because she was learning the job and he wanted her to know everything right away and to do everything right with no training. Ms. Krsek told the claims deputy that the employer would always belittle her and was rude to her. Ms. Krsek told the claims deputy that this was the basis for her quit. Ms. Krsek told the claims deputy that she had told the employer that if he did not start treating her with a little respect, she would quit. Ms. Krsek told the claims deputy that she quit when the situation did not get any better.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a

resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Neither witness seemed especially credible. Both appear to have reason to provide self-serving testimony and both appear to have done that during the hearing. The employer-employee relationship certainly seems to have been dysfunctional. Because Ms. Krsek voluntarily quit, she bears the burden of providing, by a preponderance of the evidence that working conditions were intolerable and/or detrimental and would have prompted a reasonable person to leave the employment.

The several issues that Ms. Krsek cited as the basis for her quit do not rise to the level of intolerable and/or detrimental working conditions independently or in conjunction with other issues. These include dissatisfaction with a coworker's deficient performance, having to look up the price of merchandise, and being expected to become familiar with the employer's merchandise.

The trigger for the quit appears to have been the employer balking at the request to leave work on short notice without available coverage on the last day. While Ms. Krsek asserts she did not leave work early on that day, the weight of the evidence indicates that she did. The employer's denial of a request to leave work early with short notice on July 9, absent proof from Ms. Krsek, of a bona fide emergency, would not establish intolerable and/or detrimental working conditions.

The moldy merchandise seems to have been an issue for which the parties shared responsibility and did not rise to the level of intolerable and/or detrimental working conditions.

Ms. Krsek failed to present sufficient evidence to prove that it was medically necessary for her to leave the employment either due to her own health issues or those of her children.

The water leak, while a nuisance, does not rise to the level of an intolerable and/or detrimental working condition. This is indicated in part by Ms. Krsek's testimony that the problem existed throughout the employment and her decision to stay as long as she did.

A significant basis for Ms. Krsek's quit appears to have been the employer's off-color remarks directed at her. These included such comments as telling Ms. Krsek two weeks into the employment that a personal health matter of genuine concern to her was all in her head. That comment, though it demonstrative poor judgment, did not rise to the level of verbal abuse or an intolerable and/or detrimental working condition. Mr. Hadayat's text message on or about July 9, that Ms. Krsek had been right when she asserted that she had a lot of problems, also did not rise to the level of intolerable and/or detrimental working conditions. The employer was at that point parroting back to Ms. Krsek comments that she herself had made to the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Krsek's voluntary quit was without good cause attributable to the employer. Accordingly, Ms. Krsek 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful

misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$687.12 in benefits for the period of July 5, 2015 through July 25, 2015 in connection with the additional claim and \$1,956.00 in benefits for the period of August 2, 2015 through September 19, 2015. The weight of the evidence fails to establish that Ms. Krsek engaged in intentional misrepresentation or fraud in connection with the fact-finding interview. Because the employer did not participate in the fact-finding interview, Ms. Krsek is not required to repay to overpaid benefits. The employer's account has not been charged for benefits and will not be charged for benefits paid to the claimant.

The administrative law judge noted in Exhibit D-1 that Ms. Krsek continued to claim unemployment insurance benefits throughout the period of employment despite her testimony that she was working full time. This matter will be remanded to the Benefits Bureau for determination of whether Ms. Krsek was available for work within the meaning of the law and/or overpaid benefits for the benefits weeks that included the period of May 18, 2015 through July 9, 2015.

**DECISION:**

The August 12, 2015, reference 05, decision is reversed. The claimant voluntarily quit the employment on July 9, 2015 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 for benefits paid to the claimant. The claimant is overpaid \$687.12 in benefits for the period of July 5, 2015 through July 25, 2015 in connection with the additional claim and \$1,956.00 in benefits for the period of August 2, 2015 through September 19, 2015. However, the claimant is not required to repay those benefits. This matter will be remanded to the Benefits Bureau for determination of whether Ms. Krsek was available for work within the meaning of the law and/or overpaid benefits for the benefits weeks that included the period of May 18, 2015 through July 9, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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