

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

HELEN R BROWN  
352 N DOWNEY ST  
WALCOTT IA 52773

PILOT TRAVEL CENTERS LLC  
c/o THOMAS AND THORNGREN INC  
PO BOX 280100  
NASHVILLE TN 37228

**AMENDED**  
Appeal Number: 05A-UI-08435-DT  
OC: 07/17/05 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, 4<sup>th</sup> 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 Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Pilot Travel Centers, L.L.C. (employer) appealed a representative's August 12, 2005 decision (reference 01) that concluded Helen R. Brown (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 31, 2005. The claimant participated in the hearing. Judd Huff appeared on the employer's behalf and presented testimony from three other witnesses, Roberta Norby, Betty McMillan, and Raquel (Kelly) Woodyard. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 6, 2000. She worked full time as a sandwich artist in a sandwich shop in the employer's Walcott, Iowa travel center. Her last day of work was July 20, 2005. She voluntarily quit that date.

The claimant was working a 7:00 a.m. to 3:30 p.m. shift that day, a typical schedule for her. Shortly after starting work, she had a customer who ordered a breakfast sandwich. However, the customer was very irritable, and was very fussy that the claimant make the sandwich in a particular way. He was verbally abusive toward the claimant, at least at one point calling her a "b - - -". He finally walked away to complain to Ms. Norby, the operations administrator who was the ranking manager on site. Ms. Norby came to the food counter herself to take care of the customer. The claimant attempted to explain to Ms. Norby how the customer had treated her and tried to tell her that he should be denied service. However, Ms. Norby continued making a new sandwich for the customer and told the claimant to go to the back area and wait. The claimant responded to the effect that a manager should stand up for her employee, and left. As she left, she called her immediate supervisor, Ms. Woodyard, the restaurant general manager, and told her that she had walked out and quit. Ms. Woodyard responded with a comment to the effect of "what the h - - - is wrong with you people." She attempted to put the claimant on hold while she took another call from the restaurant, but when she attempted to switch back to the claimant, she had disconnected. There had not been any prior problems that led to the claimant's decision to quit.

The claimant established a claim for unemployment insurance benefits effective July 17, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,325.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code §96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's situation on July 20, 2005 was not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). As a one-time incident, the situation on that day did not arise to the level of rendering the overall employment situation intolerable. The employer was not required to follow the claimant's preferred course of action and deny service to the customer; the employer may have had good reason for determining to handle the hostile customer by pacifying him and getting him on his way peacefully. Further, in order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. The claimant has not satisfied her burden. 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.

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

#### DECISION:

The representative's August 12, 2005 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 20, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,325.00.

ld/pjs/kjw