

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEARL P PEARSON
Claimant

APPEAL NO. 09A-UI-00578-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS INC
Employer

OC: 11/30/08 R: 03
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 9, 2009, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on January 29, 2009. Although duly notified the claimant failed to respond to the hearing notice and did not participate. The employer participated by Nancy Helmike, Human Resources Manager.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 1, 2008 until March 31, 2008 when she voluntarily quit employment by discontinuing to report for scheduled work. Ms. Pearson was employed as a part-time cashier working 20-25 hours per week and was paid by the hour. Her immediate supervisor was Heather Taylor.

Ms. Pearson discontinued reporting for scheduled work after March 31, 2008 without advance notice to the employer. She did not report for scheduled work on Thursday, April 3, 2008; Friday, April 4, 2008; or Saturday, April 5, 2008 and provided no notification to the employer to report her impending absences. Although scheduled to work, the claimant did not report and had no further contact with this employer. Prior to the claimant's leaving employment she had not been laid off, suspended or otherwise separated by the employer. Work continued to be available to the claimant at the time that she chose to leave employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Pearson quit employment with good cause attributable to the employer. It does not.

The evidence in the record establishes that the claimant chose to voluntarily quit her work by discontinuing to report for scheduled work after March 31, 2008. The claimant was not discharged, suspended or otherwise separated by the employer and was aware that continuing employment was available to her. When the claimant did not report for scheduled work on April 3, 4, or 5, 2008, and provided no notification to the employer, the employer reasonably concluded the claimant had chosen to voluntarily quit her employment.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

For the reasons stated herein the administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 9, 2009, reference 02, is reversed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that she is otherwise eligible. The administrative law judge remands to the Claims Division the issue of whether the claimant has been overpaid unemployment insurance benefits, the amount and whether the claimant will have to repay those benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs