

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY M DUNSTON
Claimant

APPEAL NO. 07A-UI-03760-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BI-CA ENTERPRISES INC
COST CUTTERS**
Employer

**OC: 03/18/07 R: 03
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Cost Cutters, filed an appeal from a decision dated April 9, 2007, reference 01. The decision allowed benefits to the claimant, Emily Dunston. After due notice was issued, a hearing was held by telephone conference call on April 26, 2007. The claimant participated on her own behalf and with a witness, Denise Drahos. The employer participated by Owner Cheryl Anderberg.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Emily Dunston was employed by Cost Cutters from August 10, 2006 until February 13, 2007, as a full-time stylist. Her hours were 9:00 a.m. to 5:00 or 6:00 p.m., two days per week; noon until 8:00 p.m. or 9:00 p.m., two days per week; and 9:00 a.m. to 5:00 p.m. on Saturday. The hours were subject to some fluctuation depending on the level of staff and amount of work. The claimant had complained about having to work until 6:00 p.m. two days per week because it made it harder for her to pick up her children from daycare. Her mother picked them up sometimes and the employer tried to “bend” her hours whenever it was possible.

She also complained because the smock she was wearing did not fit her well and was minus a button. The employer supplied her with a button to sew on and ordered her a new smock which would fit her better. She had to pay for the smock and the cost would have been deducted from her wages gradually over a few weeks, but the entire amount was deducted from her final paycheck, which occurred after her decision to quit.

On February 15, 2007, Manger Lori Anderson came to the shop and talked with the claimant in her office. She was being issued a written warning because on Saturday, February 10, 2007, the cash drawer had been short \$8.00, and the claimant had asked the other staff to contribute money to make the drawer balance. Ms. Dunston was in no way responsible for the drawer and

was not being written up for the shortage, but for assuming the authority to ask others for contributions to make it balance.

The claimant was upset and stated she did not agree with the warning. Ms. Anderson said she did not have to sign it but it would go into her file. Ms. Dunston said again she did not agree with it and walked out, saying she "could not take it anymore."

Emily Dunston has received unemployment benefits since filing a claim with an effective date of March 18, 2007.

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.

871 IAC 24.25(28) 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:

(28) The claimant left after being reprimanded.

The claimant quit because the manager of the store was issuing her a written warning. There is nothing to indicate she was in danger of being discharged at that time. Under the provisions of the above Administrative Code section, this does not constitute good cause attributable to the employer for quitting. As for Ms. Dunston's allegations of "stress," this appears largely to have been due to her childcare situation, but that is a matter of purely personal consideration and also does not constitute good cause attributable to the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 9, 2007, reference 01, is reversed. Emily Dunston is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$765.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw