

**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**

**DANETTE E LUJAN  
P O BOX 192  
300 SUFFICOOOL STREET  
HAZELTON IA 50641**

**CITY OF STRAWBERRY POINT  
ATTN CLERK  
TOWN HALL  
STRAWBERRY POINT IA 52076**

**Appeal Number: 04A-UI-04402-HT  
OC: 03/14/04 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 – Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, City of Strawberry Point (Strawberry Point), filed an appeal from a decision dated April 9, 2004, reference 01. The decision allowed benefits to the claimant, Danette Lujan. After due notice was issued a hearing was held by telephone conference call on May 11, 2004. The claimant participated on her own behalf. The employer participated by City Council Member Doug Schmidt and was represented by City Attorney Tim Schloss.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Danette Lujan was employed by Strawberry Point from April 2003 until March 10, 2004. She was the full-time city clerk.

The employer had many problems with the claimant's performance. She had failed to submit a financial report to the State of Iowa in a timely manner and the city had to pay a penalty as a result. Her evaluation in January 2004 was largely unsatisfactory, and as of the time her employment ended, she had not returned the evaluation and it has subsequently become lost. In addition, she failed to timely submit a notice of protest to the unemployment claim of another employee who had been released.

As part of her main job duties Ms. Lujan was to submit a budget to the city council by March 15, 2004. The council reviewed it as it was being processed and was not satisfied with the claimant's work. On March 9, 2004, City Council Member Doug Schmidt notified the claimant he was not confident her job would be secure as a result of the poor performance. She indicated she would quit if that is what the council wanted. At the beginning of the meeting on March 10, 2004, Ms. Lujan agreed to resign and submitted a written resignation.

Danette Lujan has received unemployment benefits since filing a claim with an effective date of March 14, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant quit because she was concerned the employer intended to fire her for poor work performance. While Mr. Schmidt had said he was not certain about the future of her job, only the council as a whole could vote to discharge her. Her offer to resign was accepted and she tendered the resignation indicating she was leaving because she could not work to the employer's satisfaction. Under the provisions of the above Administrative Code section, this is a voluntary quit without 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, 2004, reference 01, is reversed. Danette Lujan 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 \$1,932.00.

bgh/s