

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J MUDDERMAN
Claimant

APPEAL NO. 08A-UI-11321-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMPBELL OIL CO INC
Employer

OC: 11/09/08 R: 02
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 26, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on December 16, 2008. The claimant participated. The employer participated by John McKinney, Attorney at Law, and witnesses Judy Hemphill, Lester Campbell and Norma Campbell.

ISSUES:

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 last worked for this employer from December 17, 2007 until September 26, 2008 when she voluntarily quit employment. Ms. Mudderman held the position of full-time store supervisor and was paid by salary. Her immediate supervisor was the company president, Lester Campbell.

Ms. Mudderman left her employment without advanced notice on September 26, 2008 after being informed that prices on beer had been changed at some store locations without her knowledge or instructions. Ms. Mudderman as the company's store manager supervisor usually worked in conjunction with store managers in setting prices on beer and other items based upon their costs, profit ratios and competitive factors. The claimant believed that Judy Hemphill, a store manager, had acted to undermine Ms. Mudderman's position within the company and left employment without notice believing that her job was in jeopardy. The employer had not indicated any dissatisfaction with Ms. Mudderman's performance and had not indicated that the claimant's job was in jeopardy for any reason.

Prior to leaving her employment Ms. Mudderman had not indicated any specific concerns regarding Ms. Hemphill's conduct regarding the beer pricing and had not afforded the employer an opportunity to explain why the pricing had taken place without Ms. Mudderman's knowledge. The change in pricing had taken place because wholesale prices on beer had dramatically changed and Ms. Mudderman had not implemented price increases for a substantial period of time. When Ms. Hemphill and two other managers had repeatedly been unable to make contact with Ms. Mudderman for price changes, Ms. Hemphill brought the matter to the attention of management and was authorized to make the changes by the company owner.

Work continued to be available to Ms. Mudderman 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. Mudderman voluntarily quit her employment for reasons that were attributable to the employer. It does not.

The evidence in the record establishes that Ms. Mudderman left her employment due to general dissatisfaction with working with Ms. Hemphill. The parties had previously gotten along satisfactory but the relationship Ms. Mudderman and Ms. Hemphill had deteriorated because Ms. Mudderman felt that Ms. Hemphill was trying to get Ms. Mudderman's job and because Ms. Hemphill believed the claimant had acted inappropriately in accepting management suggestions and directives from a consultant and from company management itself.

At the time Ms. Mudderman left her employment without advanced notice the employer had not indicated any dissatisfaction with the claimant's job performance and the claimant's job was not in jeopardy. Company management had authorized a change in beer pricing because three store managers had requested permission to increase prices based upon wholesale price increases and because Ms. Mudderman had not implemented the changes for a substantial period of time. Prior to leaving her employment Ms. Mudderman did not bring any concerns to the attention of company management and the employer was precluded from an opportunity to explain the reasons for management directives or to otherwise address any of Ms. Mudderman's concerns.

The court in Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993) held that an individual who voluntarily leaves his or her employment due to an alleged work-related reason must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Inasmuch as the claimant did not give the employer an opportunity to resolve complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

For the reasons stated herein, the administrative law judge concludes the claimant voluntarily quit employment for reasons not 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 November 26, 2008, reference 01, is reversed. The claimant voluntarily quit work 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 she is otherwise eligible. The administrative law judge remands to the Claims Division the issue of whether the claimant has been overpaid, the amount and whether the claimant will have to repay those benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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