

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S FRANCK
Claimant

APPEAL NO. 15A-UI-03471-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRIC LTD
Employer

OC: 01/25/15
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(f) – Voluntary Quit Due to Compelling Personal Reasons
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 16, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's voluntary quit was compelling personal reasons and that the absence from the employment did not exceed 10 days. After due notice was issued, a hearing was held on April 14, 2015. Claimant Melissa Franck participated. Sarah Hagstrom, District Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant voluntarily quit for compelling personal reasons, prior to leaving informed the employer of the compelling personal reasons, was gone from the employment for a period not to exceeding 10-working days unless a longer period was approved by the employer, immediately after the compelling personal reasons ceased to exist, returned to the employer and offered her services, and her regular or comparable work was not available.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Melissa Franck was employed by CRIC, Ltd., d/b/a Cost Cutters, as a full-time stylist from August 2014 until January 15, 2015, when she voluntarily quit the employment due to compelling personal reasons. Ms. Franck was being harassed by her boyfriend. Ms. Frank's boyfriend did not work

for the employer. On January 15, Ms. Franck quit without notice prior to the end of her shift after she received threatening phone calls from boyfriend while at work and after her boyfriend stood outside the workplace. Ms. Franck did not notify the employer of the basis for her quit. Ms. Franck did not attempt to return to the employment. The employer attempted unsuccessfully to contact Ms. Franck. The employer was unable to establish further contact with Ms. Franck until the March 13, 2015 fact-finding interview and only then learned the basis for Ms. Franck's separation from the employment. Sarah Hagstrom, District Manager, had represented the employer at the fact-finding interview.

Ms. Franck established a claim for benefits that was effective January 25, 2015 and received \$2,307.96 in benefits for the 10-week period of January 25, 2015 through April 4, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The Employment Appeal Board, in reversing an earlier decision entered by the undersigned administrative law judge that had allowed benefits to a claimant whose abuser was employed by the same employer, provided an exhaustive legal analysis concerning why a voluntary quit due to domestic abuse is not a voluntary quit for good cause *attributable to the employer* under established Iowa law. See Pyland vs. J & K Anderson, Inc., Hearing Number 14B-UI-06027, filed September 26, 2014.

The evidence in the record indicates that Ms. Franck voluntarily quit the employment on January 15, 2015 for compelling personal reasons based on ongoing harassment perpetrated by her then boyfriend. The weight of the evidence fails to support Ms. Franck's assertion that she notified the employer of why she was quitting the employment. Even if Ms. Franck had notified the employer of the reason for her quit, her time away from the employment exceeded 10 working days and the employer had not approved a longer absence. Ms. Franck indeed

never attempted to return to the employment. Though Ms. Frank had compelling personal reasons for quitting the employment, the quit was not for good cause attributable to the employer. Because Ms. Franck did not notify the employer of the basis for the quit and, more importantly, because the separation from the employment exceeded 10 working days, Ms. Franck's separation from the employment does not meet the requirements of the exception to disqualification set forth at Iowa Code section 96.5(1)(f). Accordingly, Ms. Franck is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$2,307.96 in benefits for the 10-week period of January 25, 2015 through April 4, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer's account will not be charged for benefits already paid or for future benefits.

DECISION:

The March 16, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment on January 15, 2015 without good cause attributable to the employer. The claimant voluntarily quit for personal reasons, but the claimant did not notify the employer of the compelling personal reasons prior to separating and the separation lasted more than 10 working days. The claimant is disqualified for benefits until she 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 was overpaid \$2,307.96 in benefits for the 10-week period of January 25, 2015 through April 4, 2015. The employer's account shall not be charged for benefits already paid or for future benefit.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs