

**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**

**RUTH A BELL
2902 AVE “K”
FT MADISON IA 52627**

**CIGARETTE OUTLET INC
C/o JOSEPH DEPAEPE
319 E 2ND ST STE 104
MUSCATINE IA 52761-4100**

**Appeal Number: 05A-UI-04467-C
OC: 04/03/05 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Cigarette Outlet, Inc. filed an appeal from a representative's decision dated April 19, 2005, reference 01, which held that no disqualification would be imposed regarding Ruth Bell's separation from employment. After due notice was issued, a hearing was held on June 14, 2005 in Burlington, Iowa. Ms. Bell participated personally and Exhibits A, B, and C were admitted on her behalf. The employer participated by Debra Schnyder, Supervisor; Nasha Jaciunde, Manager; and Mike Gripp, Owner. Exhibits One through Seven were admitted on the employer's behalf. Kathy Anderson, M.D., participated pursuant to a subpoena issued on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Bell was employed by Cigarette Outlet, Inc. beginning in December of 2003. Her work location consisted of a convenience store, gas station, and laundry. She worked from 25 to 35 hours each week as a cashier. Ms. Bell did not have any problems associated with her employment prior to March 5, 2005. On that date, she was stuck by a hypodermic needle while emptying trash. The incident caused some degree of stress because of the possibility of being infected by the needle. Ms. Bell received medical treatment and appropriate testing was done.

On March 21, Ms. Bell received a written warning because some of her duties had not been performed. On March 26, she was suspended from work while the employer investigated an allegation that she had driven off without paying for gas. Ms. Bell saw her doctor on March 28 and complained of stress. Dr. Anderson told her that, if her job was that stressful, she should quit. Dr. Anderson provided Ms. Bell with a note indicating it would be in her best interest to find a different job. On March 28, Ms. Bell tendered her resignation. She had not previously complained to the employer about any work-related matters that were causing her stress. Continued work would have been available if Ms. Bell had not quit.

Debra Schnyder was in Ms. Bell's store location approximately every two weeks. Over the preceding 52 weeks, the owner of the business was at the location at least once during each of 50 weeks. Ms. Bell never told either Ms. Schnyder or the owner that she had concerns about safety at the workplace.

Ms. Bell has been paid a total of \$1,782.00 in job insurance benefits since filing her claim effective April 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bell was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Bell quit because of stress after her doctor suggested she look for different work. Where an individual quits employment for medical reasons associated with the employment, she must first give the employer notice of the problem and must advise the employer that she intends to quit if the problem is not resolved. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). This notice allows the employer an opportunity to try to resolve the issue that is causing medical problems.

Ms. Bell testified that she was not experiencing any problems at work prior to being stuck by the needle on March 5. She suggests that the employer retaliated against her because of the incident. Although there was a warning given on March 21, it was not an unwarranted warning as there were duties that were not completed. If Ms. Bell felt the warning was unwarranted or retaliatory, she could have addressed the matter with someone over the manager. Ms. Bell suggested that some of her coworkers were giving her the "cold shoulder" after the March 5 incident. However, her testimony suggests that she continued to have friendly relations with her coworkers.

Ms. Bell raised a number of safety concerns during the hearing. None of the concerns had been addressed with the employer prior to quitting. She never advised the employer that she

felt there was a need for an eye-washing station or for a container for disposing of sharp needles. She never complained that she felt the lack of a pulley guard on the dryers presented a safety issue. Because she did not address her safety concerns with the employer, the employer had no opportunity to try to take corrective action. Ms. Bell also indicated that she was stressed because of frequent schedule changes. However, the matter was not discussed with the employer. The employer did not know that the schedule changes were causing stress to the extent that she might quit the employment.

For the reasons stated herein, the administrative law judge concludes that Ms. Bell has failed to establish that she had good cause attributable to the employer for quitting. The administrative law judge appreciates that Dr. Anderson may have advised her to quit. However, that is not the end of the inquiry. Ms. Bell was still required, before she quit, to try to resolve the matters that were causing her to quit. Because she did not, benefits are denied.

Ms. Bell has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 19, 2005, reference 01, is hereby reversed. Ms. Bell voluntarily quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Bell has been overpaid \$1,782.00 in job insurance benefits.

cfc/sc