

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHINA MCQUAY
Claimant

APPEAL NO: 08A-UI-05924-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**OC: 10/07/07 R: 04
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Temp Associates (employer) appealed an unemployment insurance decision dated June 19, 2008, reference 03, which held that Ashina McQuay (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2008. The claimant participated in the hearing with her mother Alvia McQuay. The employer participated through Jan Windsor, Office Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from November 12, 2007 through May 28, 2008. She was removed from her assignment at Winegard due to poor attendance. Employees are limited to three absences within a 90-day period and the claimant had missed 15 days and seven of those were unexcused. The claimant was not discharged from Temp Associates but elected to voluntarily quit for personal reasons. She completed an exit evaluation, which stated, "This is to confirm that I voluntarily resign from my Temp Associates assignment at Winegard, due to the following reasons: Personal." The claimant signed and dated that resignation letter but now contends that she did not know what it said.

The claimant filed a claim for unemployment insurance benefits effective October 7, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends she was fired and although she was removed from her assignment at Winegard, she was not discharged from the employer. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by signing a resignation letter on May 28, 2008, which indicated she resigned for personal reasons. The claimant's testimony that she did not understand what she was signing is not credible.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 19, 2008, reference 03, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,422.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs