

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE R LHEUREUX
Claimant

APPEAL NO. 11A-UI-10514-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 06/26/11
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 8, 2011, reference 01, that concluded she voluntarily quit employment due to detrimental working conditions attributable to the employer. A telephone hearing was held on September 8, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Holly Carter participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant started working for the employer on an assignment in a cleaning position at ConAgra Foods in Hamburg, Iowa, on June 15, 2010. Later, the claimant worked a cleaning assignment at Diversified Food in Nebraska City.

On February 14, 2011, the claimant returned to working on a cleaning assignment at ConAgra Foods in Hamburg, Iowa. The assignment was part-time, working from 7:00 a.m. to 1:00 p.m., Monday through Friday, at a rate of pay of \$10.00 per hour, for an average of 25 hours per week. The job was ongoing with no definite ending date.

The claimant lives in Nebraska City, Nebraska, and the drive to the plant in Hamburg involved about a 15-mile commute across the Highway 2 Bridge over the Missouri River.

Around June 18, 2011, the Highway 2 Bridge closed due to flooding on the Missouri River. As a result, the commute from Nebraska City to Hamburg now involves a commute of about two hours, as she would have to detour to Bellevue, Nebraska to get across the Missouri River.

The claimant informed the employer that she could no longer report to work at ConAgra in Hamburg due to the added expense of commuting, which would increase her gas expense to about \$180 per week. The claimant asked a staffing person with the employer whether there was any work available in Nebraska. She was told that there were production jobs at Diversified Food in Nebraska City, but no cleaning job. The claimant is looking for a cleaning job based on her past work experience.

ConAgra in Hamburg is not affected by the flooding on the Missouri River. The employer still has production employees who continue to commute from Nebraska to Iowa, but they are working full-time, 10-hour shifts, and have carpooling opportunities.

The claimant filed for and received a total of \$1,852.21 in unemployment insurance benefits for the weeks between June 26 and October 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

While the claimant choice not to continue working on the ConAgra assignment in Hamburg, Iowa, is understandable, good cause **attributable to the employer** has not been shown. None of the exceptions found in the law or rules to the voluntary quit disqualification has been established here. The Agency used 871 IAC 24.26(4) as the basis for awarding benefits. This rule provides that a claimant who leaves employment due to intolerable or detrimental working conditions has quit with good cause attributable to the employer. This rule, however, only applies if the conditions at work that the employer is responsible for are intolerable or detrimental. In this case, the work conditions at the plant in Hamburg aren't the problem. Instead, flooding conditions beyond both the claimant's and the employer's control make it economically impractical for the claimant to commute. The law has no provisions to award benefits in this case. The claimant also could be working in Nebraska City in a production job, but she only was interested in work as a cleaner.

Finally, there is a provision allowing benefits to a claimant who quits a part-time job but has sufficient wages from her other employers to qualify for benefits, (871 IAC 24, but that provision does not apply when all of the base-period wages are from the part-time employer as is the case here. 871 IAC 24.27.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 8, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw