

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NIKKI J NAYLOR**  
Claimant

**APPEAL NO. 07A-UI-04682-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUILLIN'S IOWA INC**  
**QUILLIN'S FOOD CENTER**  
Employer

**OC: 04/08/07 R: 04**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated May 4, 2007, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 23, 2007. Claimant participated. Employer participated by Don Nagel, Store Manager and Jerry Baxter, Meat Manager. Exhibits One, Two and A were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer. The second issue in this matter is whether claimant is able and available for work. The final issue in this matter is 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: Claimant last worked for employer on May 1, 2007. Claimant quit work because of an alleged change of work hours and harassment. Claimant was hired part time. Claimant signed a document at the time of hire indicating she had no set job duties or work hours. Claimant worked regularly, full time, Monday through Friday during the day time.

Claimant was shown a pornographic photo at work in January of 2007. The incident was reported. Employer took prompt remedial action. Claimant was not harassed at work after that point.

Employer realized a slow down in work. Claimant was laid off for a few days a month starting in March of 2007. Claimant filed for partial unemployment effective April 8, 2007 to compensate for the partial layoff.

Claimant also went home early on many days. Additional work may have been available had claimant asked. Claimant did not specifically ask for extra work. Employer mentioned to claimant that work was available outside of the normal meat wrapping job and on weekends. Claimant chose to go home when her work was done. Employer chose to not specifically order claimant to perform extra work.

Claimant quit effective May 1, 2007 due to change in work hours and alleged harassment.

Claimant was not promised full time work at the time of hire.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of alleged harassment and change in work hours. While there was an isolated instance of harassment the situation was promptly resolved. Since no ongoing harassment has been established this is not good cause for a quit.

The change in work hours was due to a work slow down. Claimant was properly compensated by partial unemployment. Since claimant was hired with no promise of job or work hours, the change was not good cause for a voluntary quit. Furthermore, employer may have had additional work had claimant pursued the issue. It seems all too clear that claimant did not want the extra hours of work. There is no convincing evidence that claimant's work hours were reduced in retaliation for the harassment claim. To the contrary, the reduction in work was caused by lack of demand. This is a quit for personal reason without cause attributable to employer. Benefits withheld effective May 1, 2007.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The second issue presented is whether claimant was able and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Claimant has established that she is able and available for full time work effective April 8, 2006. Claimant had been off work under medicinal care for a week with ongoing issues. That was resolved with a full release to work. There is no disqualification for being able and available for work.

The final issue in this matter is whether claimant is overpaid unemployment insurance benefits.

Iowa Code section 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.

The administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$286.00 pursuant to Iowa Code section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to a voluntary quit without good cause attributable to employer.

Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has re-qualified or is otherwise eligible.

**DECISION:**

The decision of the representative dated May 4, 2007, reference 02, is reversed. Unemployment insurance benefits shall be withheld effective May 1, 2007, until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is able and available for work effective April 8, 2007. Claimant is overpaid unemployment insurance benefits in the amount of \$286.00 for the two-week period ending May 5, 2007.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs