

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY REES
Claimant

APPEAL NO. 06A-UI-09238-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 07/30/06 R: 12
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (employer) appealed an unemployment insurance decision dated September 8, 2006, reference 02, which held that Amy Rees (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 October 2, 2006. The claimant participated in the hearing. The employer participated through Mallory Russell, Human Resources Generalist. 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time Specialist II in the press department from September 26, 2005 through July 5, 2006, when she voluntarily quit her employment. She received a written warning on March 8, 2006 for missing two consecutive days and a final warning on April 4, 2006. The claimant called in absent on June 16 and was a no-call/no-show on June 20. She worked on June 21, which was her last day of work, and called in her absence on June 23, 2006. The claimant was a no-call/no-show on June 26 and 27 but called in on June 28, 2006. She was a no-call/no-show on June 29, 30 and July 5, which was the next scheduled workday. The employer called the claimant on July 5 to ask what was going on and the claimant stated that she needed to be fired because she was having family problems and could not return to work. The employer told her it was better to quit than to be fired, so the claimant said she was voluntarily resigning due to family problems.

The claimant filed a claim for unemployment insurance benefits effective September 8, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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 when she stopped calling and reporting to work after June 21, 2006. She carried out that intent when she told the employer on July 5, 2006 that she was voluntarily resigning due to family problems.

Although the claimant contends she was laid off, the evidence demonstrates this was not the case. No employees were laid off at that time and production was increased. 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 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.

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 September 8, 2006, reference 02, 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 \$2,056.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw