

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

SHARI L JACOBS
PO BOX 90
BROOKLYN IA 52211

ALCHEMIST USA LLC
PO BOX 8374
GURNEE IL 60031

Appeal Number: 06A-UI-02912-HT
OC: 01/29/06 R: 02
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) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Alchemist USA, filed an appeal from a decision dated February 27, 2006, reference 01. The decision allowed benefits to the claimant, Shari Jacobs. After due notice was issued, a hearing was held by telephone conference call on March 30, 2006. The claimant participated on her own behalf. The employer participated by District Manager Anu Menon.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shari Jacobs was employed by Alchemist USA from November 16, 2005 until January 31, 2006. She was the full-time manager of a gas and

convenience store in Malcolm, Iowa. Ms. Jacobs had been hired in November 2004 by Post Petroleum and was a sales associate until she was promoted to manager in August 2005, after all other employees had walked out.

Alchemist USA took over the ownership of the store November 16, 2005. The claimant agreed to remain as the manager but did ask for an assistant manager to be hired. The new owner was trying to make arrangements to do this and offered the position to another worker, who declined.

Ms. Jacobs' duties changed slightly, she was having to make arrangements for any work to be done on the store such as plumbing, electrical or other maintenance, on her own rather than calling the corporate office. She had to do some of the daily reports by hand instead of by computer as the previous owners had taken the computer when the ownership changed hands. The area supervisor asked all the store managers if they would work holidays but when they declined, there were no consequences. The area manager also told the new owner's district manager to give the new employees an opportunity to "catch on" to the new procedures. The claimant's mandatory workweek had been reduced from 52 to 55 hours from the previous owner to 50 hours with Alchemist.

The claimant notified Area Supervisor Darla Miller on January 11, 2006, she was quitting and would work through the end of the month. There was no particular incident which precipitated the decision to resign, just "all the stress." Ms. Jacobs had not consulted with a doctor but had a history of depression and was afraid the stress would trigger another episode.

Shari Jacobs has received unemployment benefits since filing a claim with an effective date of January 29, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is. 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.

The claimant quit because she did not like some of the new routines and minor changes in job duties with the new owner of the business. She worked for less than two months before deciding the transition period was too stressful because she did not have an assistant manager. However, she did not have an assistant manager when she took over the manager's job in August 2005 while still employed with the previous owner. The changes in her duties were not major or substantial, and there was no change in her pay and a lowering of the number of hours she was required to work per week.

Her major concern appears to have been the possibility of another episode of depression and, while this is a legitimate concern, she did not consult with a physician who recommended she quit. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973).

The record does not establish good cause attributable to the employer for the claimant's resignation and she is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 27, 2006, reference 01, is reversed. Shari Jacobs is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,338.00.

bgh/kkf