

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TASHIEYANA ONEAL
Claimant

APPEAL NO: 13A-UI-12452-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 10/06/13
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Kwik Trip, Inc. (employer) appealed an unemployment insurance decision dated October 30, 2013, reference 01, which held that Tashieyana O'Neal (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 December 3, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Julie Stumbo, Store Leader.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

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 part-time food service co-worker from July 3, 2013 through September 12, 2013 when she walked off her shift. She had requested a set schedule because she is a senior in high school and the employer accommodated the request. The claimant was scheduled to work Sunday, Monday and Thursday nights from 4:00 p.m. to 10:00 p.m. On September 11, 2013, she said work interfered with her powder puff practice which begins at 6:00 p.m. The schedule had been posted for three weeks and the claimant had not requested time off on September 12, 2013.

The employer advised her she had not requested time off but could try to find a replacement. The claimant was unsuccessful in finding a replacement so reported to work on September 12, 2013. However, she informed her shift leader that she had to leave 6:00 p.m. and was advised she did not have permission to leave. The claimant then asked how she would go about putting in her two-week notice since she was missing out on her senior year of high school and wanted to quit.

The store leader, who was not in the store at that time, was notified and called the claimant, who asked what would happen if she walked off her shift. The store leader asked if she was going to give her two-week notice or walk off her shift. The claimant did not answer the question. The claimant had a car full of people waiting for her to leave at that time. The store leader advised her she could leave. The claimant was scheduled to work again on September 14, 15 and 16, 2013 but was a no-call/no-show.

The claimant filed a claim for unemployment insurance benefits effective October 6, 2013 and has received benefits after the separation from employment in the amount of \$690.00.

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 and acted to carry it out by walking off her shift and never returning. She quit for personal reasons since work was interfering with her extracurricular activities and spending time with her friends.

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.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because the employer participated in the fact-finding interview while the claimant did not. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$690.00.

DECISION:

The unemployment insurance decision dated October 30, 2013, reference 01, 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 \$690.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs