

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ALI HEIMBAUGH**  
Claimant

**APPEAL NO: 06A-UI-09103-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JC PENNY CORPORATION INC**  
Employer

**OC: 01-29-06 R: 01  
Claimant: Respondent (2)**

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Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 31, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2006. The claimant participated in the hearing. Miller Derr, Store Manager; Lee Dean, Department Supervisor; Mary Nichols, Office Associate; and Pam Little, Sales Support Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time retail sales associate for J.C. Penney from October 25, 2004 to August 4, 2006. The claimant was experiencing problems with co-workers and felt they were argumentative and started rumors and gossiped. In December 2005 the claimant had an argument with co-worker Kristen Bloom about Ms. Bloom taking an excessive break. Ms. Bloom resigned in December 2005 and the claimant testified she came back into the store after quitting and threatened the claimant but she did not report the situation to the employer. In February 2006 co-worker Chelsea McFarland spoke to the department supervisor because she and the claimant were having a conflict because both owned an identical pair of pants. The claimant was also upset about the situation because another co-worker said she did not want to hear them fight about the pants any longer. The claimant suffers from schizophrenia and had to be hospitalized after that incident as well as in April and July 2005. In May 2006 the claimant talked to Store Manager Miller Derr and stated she wanted to work as a cashier but was being asked to clean and straighten the department much more often than cashier. Mr. Derr explained that employees are assigned where needed depending on the employer's business needs and also mentioned her complaint to Department Supervisor Lee Dean. The claimant

never spoke to Ms. Dean about her illness or any concerns she had about her job or co-workers. The claimant took a leave of absence from June 24, 2006. She requested FMLA but it was denied because she failed to provide the required paperwork. She was released to return to work and was scheduled to begin August 6, 2006. On August 4, 2006, the claimant called the employer and stated she was voluntarily quitting because she no longer wanted to work for the employer. She did not tell the employer prior to quitting that she was going to leave if her concerns were not addressed.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant had conflicts with co-workers, most of the incidents she testified about occurred in December 2005 and February 2006 and she did not complain or bring her concerns to the attention of the employer. Although sympathetic to the claimant's illness, she has not demonstrated that her physician told her she had to leave her employment or that the working conditions were unlawful, intolerable, or detrimental as required by Iowa law. Consequently, the administrative law judge concludes the claimant voluntarily left her employment and has not demonstrated that her leaving was for good cause attributable to the employer. 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 August 31, 2006, reference 03, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and 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 \$744.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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