

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA L FAST
Claimant

APPEAL NO. 08A-UI-01091-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 12/16/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 22, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 14, 2008. The claimant participated. The employer participated by Jesus Mendez, General Manager and Loanna Curtis, Vocation Manager.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer and 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: The claimant worked for this employer from June 11, 1998 until April 13, 2007 when she voluntarily quit employment. Ms. Fast was employed as a full-time custodian. Her immediate supervisor was Loanna Curtis.

Ms. Fast provided notice on April 4, 2007 of her intention to work until April 20, 2007, when she would leave her employment to provide babysitting services for her daughter. The claimant was considered to be an excellent employee, however, her resignation was accepted. The claimant worked until April 13, 2007 not completing the notice period that she had provided. Prior to leaving her employment, the claimant had not indicated any need for an accommodation or that her job assignment as a custodian was causing her any additional problems with her knees. The claimant had been off work for a period of time in 2005 for knee surgery and had returned with a doctor's restriction. The employer filed the restriction. The most recent restriction provided by Ms. Fast to her employer was dated March 8, 2007. At that time her doctor had placed a limitation on climbing stairs. The claimant was then assigned to a facility with minimal stair climbing or cleaning. The claimant did not complain that the assignment had exceeded the limitations or that she was unable to perform her duties. Subsequently the claimant was offered

a different assignment that required even less use of stairs but declined the offer. At the time the claimant submitted her resignation she provided no medical documentation indicating that she should leave employment for medical reasons but stated that her only reason for leaving was her desire to spend time with her grandchildren babysitting for the claimant's daughter. Ms. Fast added when speaking to Mr. Mendez that she also believed it was a good decision related to her health but provided no additional statements, requests or medical documentation. Work continued to be available to Ms. Fast at the time that she chose to leave.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant's primary reason for leaving her employment on April 13, 2007 was the claimant's desire to accept other employment as a babysitter for her grandchildren. The evidence in the record establishes that Ms. Fast made no request for accommodations and did not indicate to her employer in any manner that her most recent job assignments were exceeding doctor's limitations or that she was unable to perform her duties for medical reasons. The employer was aware that the claimant had been under a light duty limitation and had assigned the claimant to a work assignment with minimal stair climbing because of the limitation. Ms. Fast did not indicate in any manner that the assignment had exceeded the limitations or that she was unable to do her job. The evidence establishes the claimant had rejected an offer of a different assignment that required even less stair climbing.

While Ms. Fast's reasons for leaving were undoubtedly good from a personal viewpoint, her reasons for quitting were not attributable to the employer. The employer was not given a final opportunity to assign the claimant to different work because the claimant felt the current assignment exceeded the limitations and the claimant did not provide any medical documentation indicating that she was required to leave because of medical reasons.

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.

For the reasons stated herein, the administrative law judge must conclude that the claimant left employment for personal reasons under disqualifying conditions.

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. The claimant is overpaid benefits in the amount of \$1,960.00.

DECISION:

The representative's decision dated January 22, 2008, reference 01, is hereby reversed. The claimant quit employment under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,960.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs