

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA M MIRFIELD
Claimant

APPEAL NO. 12A-UI-04422-VST

GYM TOWLES USA
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/11/12
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 17, 2012, reference 02, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 10, 2012. Claimant participated. The employer participated by Rocky Herrin, owner, and Paul Bohlandy, owner. The record consists of the testimony of Melissa Mirfield; the testimony of Rocky Herrin; and the testimony of Paul Bohlandy.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer for a total of 17 days. She started her job on February 20, 2012, and quit on March 6, 2012. She then returned to work on March 12, 2012, and worked for four hours and then quit again.

The claimant had been previously employed by another company, as had the owners of the employer. A couple of employees of this former employer made several calls to the claimant in which the claimant was told that a lawsuit was planned against the employer and her. The claimant was assured that this matter would be handled by the employer's attorneys and that nothing wrong had been done. The phone calls stopped. Although a lawsuit has been filed, the claimant has not been served and a motion to dismiss the lawsuit is pending in federal court in Illinois.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In this case, the evidence is uncontroverted that it was the claimant who initiated the separation of employment. She quit her job twice; the final quit was on March 12, 2012. The claimant said that she quit her job due to the pressure of the lawsuit that she believed was pending against her. A couple of phone calls were made to the claimant from her former employer and someone was seen circling the parking lot of the employer. Once these matters were brought to the attention of the employer's attorney, the harassment stopped.

The administrative law judge can certainly understand why the threat of a lawsuit could be stressful. What is significant in this case is that the claimant quit once because of the alleged stress, but then asked for her job back because she loved it so much. She then quit again after only four hours. If the workplace truly was intolerable or detrimental, the claimant would not have asked to come back with the statement that she loved her job. The administrative law judge believes that the claimant quit for reasons personal to her that had only a tangential relationship to the job. She had problems with an ex boyfriend and child support issues and told the owners of the company that she was quitting due to these pressures. The most reasonable inference from the evidence is that the pressure of a lawsuit had little to do with the claimant's decision to quit; ask for her job back; and quit again. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

- b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claim section for determination.

DECISION:

The decision of the representative dated April 17, 2012, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs