

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER A HESS**

Claimant

**APPEAL NO. 11A-UI-16033-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NATIONAL GLASS LLC**

Employer

**OC: 10/02/11**

**Claimant: Respondent (2-R)**

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 December 7, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 20, 2012. Claimant participated. The employer participated by Adam Trachta, project manager and estimator. The record consists of the testimony of Jennifer Hess; the testimony of Adam Trachta; and Claimant's Exhibit A.

**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 employer is primarily engaged in glass and glazing in the construction industry. In addition to the glass business, there is a part of the company called National Grass Company, which is landscaping and mowing. The claimant was hired on July 28, 2010. She was assistant to the office manager and to Brandon Patten, the president. Her last day of work was October 7, 2011. She never returned to work after that date.

On October 4, 2011, the claimant and another employee, named Colton Patten, exchanged a series of text messages. Colton was seventeen years old and the son of the president, Brandon Patten. Colton was still in high school and did part-time mowing. The claimant was responsible for giving Colton his mowing assignments. The claimant felt that Colton would not follow her instructions. The text messages were argumentative. The claimant told Colton that the only reason he had a job was his father. Colton said that the only reason the claimant had a job was

her looks. The claimant felt that this was a hostile work environment and that she could no longer deal with it.

## **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.

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 voluntarily quit her employment on October 7, 2011, due what she perceived to be a hostile work environment. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "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 claimant quit because of a heated exchange by text message between her and a seventeen-year-old, part-time employee on October 4, 2011. The claimant was obviously frustrated by her dealings with the president's son, but a series of texts on one day does not make a hostile work environment. This is not to excuse Colton's statements, but the claimant's conduct was not commendable, either. The claimant did not provide evidence that would show a pattern of sexual harassment from other employees in the company. The situation with Colton in and of itself does not satisfy the claimant's burden of proof that she worked in a hostile work environment. Benefits are therefore 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 Claims Section for determination.

**DECISION:**

The representative's decision dated December 7, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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