

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHARON R MILLER
3929 – 42ND ST
DES MOINES IA 50310

HOMELAND SECURITY/TSA
C/o TALX UC EXPRESS
PO BOX 66945
ST LOUIS MO 63166

TALX UC EXPRESS
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AMENDED

Appeal Number: 05A-UI-06123-HT
OC: 05/01/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Homeland Security, filed an appeal from a decision dated May 26, 2005, reference 06. The decision allowed benefits to the claimant, Sharon Miller. After due notice was issued a hearing was held by telephone conference call on June 28, 2005. The claimant participated on her own behalf. The employer participated by Human Resources Specialist Tony Grotto. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sharon Miller was employed by Homeland Security from June 20, 2004 until May 3, 2005. She was a full-time transportation security screen on a two-year probationary period.

During her probation the claimant had been disciplined more than once for inappropriate language and unprofessional conduct. The last discipline had been a suspension on April 9, 10, and 11, 2005, for an incident on March 18, 2005. In the progressive discipline the next step for Ms. Miller would have been discharge.

On May 3, 2005, Human Resources Specialist Tony Gotto met with the claimant regarding another complaint of inappropriate language from an incident that day. He indicated to her that if this complaint was founded after an investigation, and it looked likely to be, then she would be discharged. She was notified she could resign rather than face the possibility of discharge, which would exclude her from any further employment with the federal government. Ms. Miller acknowledged she had been swearing, although she denied the circumstances were exactly as the complaint had stated, but elected to resign rather than be discharged when the investigation was completed.

Sharon Miller has received unemployment benefits since filing a claim with an effective date of May 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant maintained she was given the choice of resigning or being discharged, but the record, including her own testimony upon closer examination, does not support this. She was notified of a complaint regarding inappropriate language, and she did acknowledge she had been using such language. Although she might have been urged to resign, no decision had been made regarding a discharge because an investigation into the complaint was not complete and she was not given the choice of resigning or being discharged by the end of the

meeting on May 3, 2005. Her decision to quit was apparently based on her belief that she was guilty of the violation and would eventually be discharged, and decided to quit rather than face the possibility of discharge in a week or so. This does not constitute good cause attributable to the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 26, 2005, reference 06, is reversed. Sharon Miller is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,055.00.

bgh/pjs/pjs