

**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**

**ALICIA D OXFORD
6209 SE 5TH ST APT 9
DES MOINES IA 50315**

**GIT-N-GO CONVENIENCE STORES INC
2716 INDIANOLA AVE
DES MOINES IA 50315-2399**

**AMENDED
Appeal Number: 04A-UI-09047-LT
OC: 07-11-04 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 – Voluntary Leaving
Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 12, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 8, 2004. Claimant did not participate. Employer did participate through John Judge. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time cashier through May 8, 2004, when she quit. She called Aaron

Halstead, Manager, on May 8, an hour before her shift and said she would not be at work that day. (Employer's Exhibit One) When asked, claimant gave no reason for the intended absence other than it was "personal." Because of her recent frequent absences related to "personal" reasons, Halstead told her that she must report or provide a "verifiable" excuse and if she did not report, he would consider her to have quit her job. She said "fine," hung up the phone and did not report thereafter except to pick up her paycheck.

The claimant has received unemployment benefits since filing a claim with an effective date of July 11, 2004.

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.

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 (amended 1998).

Claimant's refusal to provide a reasonable excuse for her absence and her failure to report for work either May 8 or thereafter indicates an intention to quit her job. An employer is entitled to know reasons why an employee is going to miss a scheduled shift. Claimant's withholding of that information and her decision not to return to work were not good cause reasons attributable to the employer for quitting. 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 12, 2004, reference 01, decision is reversed. The claimant voluntarily left her 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 \$969.00.

dml/b/b