

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY PIRTLE**

Claimant

**APPEAL NO. 07A-UI-11320-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LF STAFFING SERVICES INC**

Employer

**OC: 10/21/07 R: 03  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Labor Finders Staffing Services, Inc. (employer) appealed an unemployment insurance decision dated November 28, 2007, reference 04, which held that Sherry Pirtle (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 26, 2007. The claimant provided a telephone number but was not available when that number was called for the hearing and, therefore, did not participate. The employer participated through Tracie Gutknecht, Branch Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time light industrial/clerical worker from August 28, 2006 through August 30, 2007 when she voluntarily quit. Although it is not written policy, the employer pays its employees for two hours of work when the employee shows up to work and the customer no longer needs the employee. When a client wants an employee for less than four hours, the employer pays the employee for a minimum of four hours. The claimant had previously worked for Firestone in August 2007. The branch manager told her on August 15, 2007 that she would be called by the employer if the customer needed her again.

On Friday, August 17, 2007, the branch manager was out of town when the claimant arrived at the office reporting that she was supposed to go to work for Firestone. The employer's staff was new and without knowing better, gave the claimant a work ticket. The claimant arrived at Firestone but was not needed since she had not been requested. The claimant returned to the employer's office and the employer's staff paid the claimant for four hours of work when she

should not have been paid anything. The branch manager later discussed this with the claimant and explained that she should not have been paid anything as the employer did not send her to Firestone. The claimant became angry and denied any culpability.

The claimant worked for General Mills on August 29, 2007 and was called to return on August 30, 2007. However, when the claimant arrived, the customer no longer needed her. The claimant returned to the employer and requested two hours of pay but was told by the branch manager that she had been overpaid during the previous week. The claimant became angry with the employer and told her to "screw off." The employer has not heard from the claimant since.

The claimant filed a claim for unemployment insurance benefits effective October 21, 2007 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the employer to "screw off" when the employer refused to pay her for two hours on August 30, 2007 since she had previously been overpaid four hours.

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 has not satisfied that burden and benefits are denied.

Iowa Code § 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 unemployment insurance decision dated November 28, 2007, reference 04, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has 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 \$1,017.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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