

#### 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 hired on May 24, 2005, as a temporary worker. On July 11, 2005, she was assigned to work at Plastic Products Company as full-time line laborer. On July 13, 2005, the claimant was unable to get to work because her van would not run. The employer did not hear from the claimant on July 13 and 14, 2005. On July 15, 2005, the claimant's mother gave the employer the claimant's badge and a letter. The letter from the claimant indicated she could not work because she did not have transportation. The claimant was without transportation until approximately August 1, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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 24.25(1) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she could not work. When an employee quits work because of lack of transportation, her leaving is without good cause attributable to the employer. The claimant left work because she did not have transportation to work. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he was not.

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

The claimant lost her means of transportation from July 13 to 31, 2005. When a claimant has no means of transportation to employment, the claimant is deemed to not be available for work. The claimant was disqualified from receiving unemployment insurance benefits because she is not available for work from July 13 to 31, 2005.

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 benefits in the amount of \$1,576.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

#### DECISION:

The representative's August 26, 2005 decision (reference 04) is modified in favor of the respondent. 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 disqualified from receiving unemployment insurance benefits from July 13 to 31, 2005, because she was not available for work. The claimant is overpaid benefits in the amount of \$1,576.00.

bas/s