

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATE S AMBROSIER
Claimant

APPEAL NO. 09A-UI-08508-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAURICES INC
Employer

OC: 07/13/08
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Maurices, filed an appeal from a decision dated June 5, 2009, reference 05. The decision allowed benefits to the claimant, Kate Ambrosier. After due notice was issued, a hearing was held by telephone conference call on June 30, 2009. The claimant participated on her own behalf. The employer participated by Processing Lead Brice Carter, Processing Manager Ned Kluever and Human Resources Manager Tom Rupp.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kate Ambrosier was employed by Maurices from November 2008 until April 29, 2009 as a part-time processor. On April 29, 2009, the claimant reported for work at noon and was scheduled until 4:00 p.m. Around 2:00 p.m. she asked Processing Lead Brice Carter if she got a break and he said she did since she was scheduled for four hours of work. Shortly thereafter Mr. Carter was told by the payroll person/receptionist, the claimant had not actually gone out on the floor to work until 12:30 p.m. because she had spent 30 minutes in the break room showing pictures of her child to her co-workers.

Mr. Carter went to the parking lot where Ms. Ambrosier was sitting in her car to smoke and told her she did not get a break after all since she would be working less than four hours. He had her return to her work area and left to perform other duties. When he returned to his office around 2:15 p.m. he found a note on his desk from the claimant saying she would not work past the end of the week because he had called her a liar. He turned the matter over to Processing Manager Ned Kluever and the three of them met to discuss the matter.

After the meeting Mr. Kluever discussed the matter with the human resources manager and the corporate human resources department. The decision was made to accept her resignation immediately.

Kate Ambrosier has received unemployment benefits since filing an additional claim with an effective date of May 3, 2009.

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.

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 quit because she had been deprived of her break due to not working at least four hours on April 29, 2009. The company policy does not allow for breaks for anyone working less than four hours in a day. Her decision to quit was without good cause attributable to the employer.

The employer accepted her resignation immediately, two days prior to her proposed last day of work. As she filed her additional claim after the effective date of her resignation, she would not have been entitled to any 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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 5, 2009, reference 05, is reversed. Kate Ambrosier is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css