

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ULA M MILLER
Claimant

APPEAL NO. 12A-UI-06720-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

OC: 05/06/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Kwik Shop, filed an appeal from a decision dated May 29, 2012, reference 01. The decision allowed benefits to the claimant, Ula Miller. After due notice was issued, a hearing was held by telephone conference call on July 2, 2012. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by District Adviser Peggy Lang.

ISSUE:

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

FINDINGS OF FACT:

Ula Miller was employed by Kwik Shop from April 2001 until May 3, 2012 as a full-time store manager. District Adviser Peggy Lang was in the store Thursday, April 27, 2012 to do a routine viewing of video surveillance footage. She discovered Ms. Miller had left the store safe open and unattended for several hours that day. This is a dischargeable offense. Ms. Lang spoke with her supervisor about it and was told that it was too close to the weekend and other managers were in meetings at the time, but the corporate office would let her know if Ms. Miller was to be discharged or not within 72 hours.

Ms. Lang relayed a written warning to Ms. Miller as well as the notice that she would receive word within 72 hours of whether she would be discharged. On April 30, 2012, the corporate office told Ms. Lang the written warning should remain in the claimant's personnel file, but she would not be discharged given her long tenure and no prior problems. Ms. Lang conveyed this information to the claimant who thanked her and said nothing more.

Ms. Miller was then no-call/no-show to work May 1, 2, and 3, 2012, which, under the company policies, is a voluntary quit. The district advisor tried two times to talk with the claimant by phone but Ms. Miller would not answer nor would she respond to the voice mail messages left by Ms. Lang to call her back.

Ula Miller has received unemployment benefits since filing a claim with an effective date of May 6, 2012.

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 24.25(4) and (28) provide:

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

871 IAC 24.25(28) provides:

(28) The claimant left after being reprimanded.

The claimant quit by being no-call/no-show to work for three days in violation of a known company rule. Her decision to quit was apparently precipitated by receiving a written warning for leaving the store safe unlocked and unattended, which could have been grounds for discharge. She was not discharged because of her long tenure with the company and no other warnings. Under the provisions of the above Administrative Code section, quitting by being no-call/no-show to work for three days because of a reprimand is a quit without good cause attributable to the employer and the claimant is disqualified.

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 May 29, 2012, reference 01, is reversed. Ula Miller is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css