

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA KLIMSTRA

Claimant

**CRACKER BARREL
OLD COUNTRY STORE INC**

Employer

APPEAL NO: 09A-UI-14953-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/09

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(37) – Resignation
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 24, 2009, reference 01, that held she was forced to resign that is a discharge for no act of misconduct on May 5, 2009, and benefits are allowed. A telephone hearing was held on November 4, 2009. The claimant participated. Kim Wadsager, Associate Manager, participated for the employer.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time retail associate/dishwasher from October 21, 2002 to May 5, 2009. The claimant experienced stress working under her shift leader for the last two to three months of employment that she reported to management. The shift leader admonished the claimant by stating she was not doing her work duties.

An associate manager advised the claimant to ignore the shift leader comments, as this person was not a supervisor. When the claimant continued to feel stressed, she gave two-week notice she was quitting employment that the employer accepted and she worked the notice period to May 5, 2009. The claim record does not show the claimant has received any benefits on her current claim. The claimant has not been looking for work due to a transportation problem.

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(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer due to resignation for personal reasons.

The claimant was told to disregard the shift leader as she was not a supervisor. While the claimant experienced stress due to verbal comments about her job duties, this does not rise to the level of intolerable/detrimental working conditions that is a good cause for quitting.

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.

Although the department record does not show the claimant receiving benefits on her current claim, this issue is remanded for further review.

DECISION:

The unemployment insurance decision dated September 24, 2009, reference 01, is reversed. The claimant was not forced to resign, but voluntarily quit without good cause due to her resignation for personal reasons on May 5, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css