

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHERRY L EMSWILER
2771 READING TRAIL
LOGAN IA 51546

BIRDDOG SOLUTIONS INC
2102 N 117TH AVE #400
OMAHA NE 68164

SECOND AMENDED

Appeal Number: **04A-UI-00444-SWT**
OC 11/16/03 R 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 8, 2004, reference 02, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on January 30, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Sue Brennan participated in the hearing on behalf of the employer with a witness, Renee Halverson.

FINDINGS OF FACT:

The claimant worked full time for the employer as a claims processor from July 1, 2001 to November 13, 2003. On November 13, 2003, the claimant's supervisor called the claimant into

her office and counseled the claimant about her absenteeism. She asked the claimant whether she was able to continue working full time. The claimant replied that she was.

Later that evening, the claimant called and left a message on her supervisor's answering machine stating that she was quitting. The claimant left work because her supervisor had questioned her ability to work full time. The employer did not reduce the claimant's hours and had no intention to reduce the claimant to part-time.

The claimant filed for and received a total of \$2,958.00 in unemployment insurance benefits for the weeks between November 16, 2003, and February 14, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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(28) 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:

(28) The claimant left after being reprimanded.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the employer stated that the claimant's hours were going to be reduced or had any intention of reducing the claimant to part-time. Good cause to quit employment has not been proven in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,958.00 in benefits for the weeks between November 16, 2003, and February 14, 2004.

DECISION:

The unemployment insurance decision dated January 8, 2004, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$2,958.00 in unemployment insurance benefits, which must be repaid.

saw/kjf/b/b