

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A LINDSEY
Claimant

APPEAL NO. 09A-UI-03108-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

OC: 01/18/09
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated February 16, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on March 23, 2009. Ms. Lindsey participated personally. The employer participated by Amy Hansen, Operations Manager, and Megan Traber, Human Resource Lead.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the employer is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by Sears Roebuck & Company most recently from November 26, 2008 until January 17, 2009 as a part-time appliance sales associate. Her immediate supervisor was Mr. Carpenter. The claimant was paid by commission.

Ms. Lindsey was previously employed by Sears Roebuck & Company in a different capacity. On November 26, 2008, the claimant accepted employment as a part-time appliance sales associate. As a part-time employee the claimant was not guaranteed any minimum number of working hours per week. The claimant was initially assigned to work 20-30 hours per week during the holiday sales season, however, after the holiday sales had subsided the claimant's working hours were reduced by the employer. Ms. Lindsey was dissatisfied at the reduction in hours and requested her immediate supervisor to increase her working hours. Mr. Carpenter responded that he would "see what he could do" but promised no increase to the claimant. Due to a scheduling error Ms. Lindsey was not assigned to work any hours for a one-week period. The following week Ms. Lindsey was assigned a minimum number of working hours and reported for those hours that were available. Based upon the employer's inability to schedule

the claimant any additional working hours per her request, Ms. Lindsey informed the store director that she was quitting employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes good cause for quitting attributable to the employer. It does not.

The evidence in the record supports the employer's position that part-time employees in the appliance sales department are not guaranteed any minimum number of working hours each week. Sales associates are paid by commission and the assignment of working hours is the sole discretion of the employer based upon business conditions and company needs. Although the claimant denies being informed in writing regarding the no minimum working hours at the time of hire, the evidence in the record establishes that Ms. Lindsey was previously employed by the company and knew or should have known that part-time employees are not guaranteed any certain number of working hours each week.

The claimant was reasonable in her request to her immediate supervisor for an increase in working hours and was placed upon further notice that no hours were guaranteed and her supervisor did not agree to increase the claimant's working hours but only indicated he would "see what he could do" about increasing the hours. Prior to leaving employment the claimant informed the store director of her intention to leave and her reasons. Per company policy the store director did not indicate that the company could guarantee any specific number of working hours for Ms. Lindsey whereupon the claimant left employment.

The question in this case is not whether Ms. Lindsey had a good personal reason for leaving but whether her reasons for leaving were attributable to the employer. The administrative law judge concludes based upon the totality of the evidence in the record that the claimant knew or should have known that there was no guarantee of a minimum number of hours available to the claimant as a part-time sales person and, therefore, the cause of the claimant's leaving was not 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.

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.

DECISION:

The representative's decision dated February 16, 2009, reference 01, is reversed. The claimant is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits are remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs