

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA L SMITH**  
Claimant

**APPEAL NO. 09A-UI-19302-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS ROEBUCK & CO**  
Employer

**Original Claim: 02/15/09  
Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

Sears Roebuck & Company filed a timely appeal from a representative's decision dated December 15, 2009, reference 03, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 3, 2010. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Bridget Clark, human resource manager; Jodi Sunderland, team manager; and Laurie Kramer, sales/service manager.

**ISSUE:**

At issue is whether the claimant quit for good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Amanda Smith was employed by Sears Roebuck & Company as a full-time order processor from March 5, 2009, until November 24, 2009, when she voluntarily quit employment due to dissatisfaction with fellow employees. Ms. Smith was paid by the hour. Her immediate supervisor was Jodi Sunderland.

Ms. Smith quit her employment on November 24, 2009, without advance notice. The claimant was contacted by her immediate supervisor and at that time indicated that she continued to have problems because two employees were "talking about her." The employer was unaware until that time that the claimant continued to have problems with other workers.

Ms. Smith had previously indicated that she was experiencing some problems with two company employees. Based upon Ms. Smith's complaints, Sears Roebuck & Company immediately investigated and spoke with the employees, attempting to resolve the issues. Although the company determined that the issues may have arisen because of statements that Ms. Smith made to the employees individually, the employer reasonably believed that the issue

had been resolved. The claimant made no further complaints to the company prior to leaving employment without advance notice on November 24, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left 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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. See Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to the employer for leaving employment is not a subjective test as to whether the employee themselves feel they have good cause, but an objective test as to whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The administrative law judge concludes, based upon the evidence in the record, that the claimant left employment based upon her inability to work with two other workers. The administrative law judge concludes that the inability of the parties to work harmoniously together did not rise to the level of intolerable working conditions. It appears that Ms. Smith's comments to the individuals were the initial source of their inability to work with one another. The employer intervened in an attempt to resolve the conflicts and reasonably believed that they had been resolved. The claimant made no further complaint to company management before quitting her employment without advance notice. While Ms. Smith's reason for leaving employment may have been good from her personal viewpoint, the claimant has not met her burden of proof that her leaving was with good cause attributable to the employer. Benefits are denied.

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 issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for determination.

**DECISION:**

The representative's decision dated December 15, 2009, reference 03, is reversed. The claimant quit without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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