

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA WHITE
Claimant

APPEAL NO: 10A-UI-11917-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 07/11/10
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

United Parcel Service (employer) appealed an unemployment insurance decision dated August 19, 2010, reference 01, which held that Amanda White (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 8, 2010. The claimant participated in the hearing. The employer participated through Dan Kelly, Des Moines Day Sort Manager and Twilight Sort Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time supervisor from January 20, 2004 through February 28, 2010. She worked a daytime shift from Tuesday through Saturday at the Des Moines Airport. On November 1, 2009 the employer realigned operations and moved the claimant and several others to a different physical location in Des Moines, Iowa. The claimant had to drive an additional 11 miles to go to work at 2609 Dixon Street in Des Moines and she now worked Sundays but her wages remained the same.

The claimant worked in the new location for over three months and then gave her notice to quit in the first week of February 2010. She reported she was quitting due to the excessive travel. The employer wanted to accommodate her and offered her a position back at the Des Moines airport but the claimant declined because she told the employer she wanted to spend more time with her family. She had been working five days a week but the move back to the airport would result in a reduced work week of four days.

The claimant filed a claim for unemployment insurance benefits effective July 11, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant quit her employment on February 28, 2010 due to a change in the contract of hire. Four months earlier, she had been moved to a different location which was 11 miles further from her home. The claimant worked over three months before she gave her resignation. The court held that a claimant's resignation seven months after a substantial change in the contract of hire was a disqualifiable event because the claimant was held to have acquiesced in the changes. Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990). The administrative law judge concludes the claimant acquiesced to the new location since she did not quit until four months after the fact. Furthermore, once the claimant gave notice to quit, the employer offered to accommodate her and move her back to the Des Moines airport but she declined.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development

determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated August 19, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs