

**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**

**SAMANTHA R JESSEN
213 PETERSON ST
ALTA IA 51002**

**KENNETH J STROUSE
D/B/A SERVICE MASTER OF STORM LAKE
815 W MILWAUKEE
STORM LAKE IA 50588**

**Appeal Number: 04A-UI-07329-RT
OC: 06/13/04 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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Kenneth J. Strouse, doing business as Service Master of Storm Lake, filed a timely appeal from an unemployment insurance decision dated July 1, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Samantha R. Jessen. After due notice was issued, a telephone hearing was held on August 18, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing as instructed in the notice of appeal. Janet Strouse, Office Manager and Co-Owner, participated in the hearing for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. A hearing was initially set for this matter for July 28, 2004 at 10:00 a.m. and rescheduled at the employer's request.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time house cleaner from May 3, 2004 until she voluntarily quit on June 16, 2004. The claimant was hired part-time but because the employer was so busy, she worked full time. On June 16, 2004, the claimant delivered a letter of the same date to the employer as shown at Employer's Exhibit One, indicating that she was quitting. The claimant quit because she believed that she had been promised a dollar per hour raise which she had not received. This was not correct. When the claimant was hired, she was informed that she would get a \$.25 per hour raise after the end of the pay period following the first month of employment. That period had not yet expired. However, the claimant was given a dollar raise for performing the work of disaster restoration after approximately one week of employment. The claimant was not promised any other dollar raise. The claimant's employment went smoothly until Monday, June 14, 2004. On the previous Friday, the claimant had been asked to take care of the office from 4:30 p.m. to 5:00 p.m. on June 14, 2004. The claimant had agreed. On June 14, 2004, the claimant asked the employer's witness, Janet Strouse, Office Manager and Co-Owner about the dollar raise. Ms. Strouse explained that no such raise had been promised. The claimant was angry and yelling and loud. Ms. Strouse told the claimant to go home and she could discuss it with Kenneth Strouse the next day. The claimant did so and was told by Mr. Strouse that no such raise was promised. The claimant and Ms. Strouse had another conversation on June 15, 2004 also about the raise and again, Ms. Strouse indicated that claimant had not been promised a dollar per hour raise. Both were upset, but Ms. Strouse was not yelling at the claimant, but the claimant was yelling at her. The next day, the claimant left her letter of resignation as shown at Employer's Exhibit One. The claimant was pregnant and because of discussions with the employer about previous difficulties with pregnancies, the employer had decided to move the claimant to office work without any reduction in pay during the course of the claimant's pregnancy and the claimant had not objected. There would be no pay reduction for this move. The employer had not indicated otherwise any actions due to the claimant's pregnancy. Although the claimant had expressed concerns about her raise beginning June 14, 2004, the claimant never indicated or announced an intention to quit if her concerns were not addressed by the employer. Although the claimant's separation from the employer herein is currently noted as non-disqualifying, the claimant is disqualified to receive unemployment insurance benefits from an earlier employer, Tasler Pallet & Lumber, Inc., on December 4, 2003 by a disqualifying decision dated July 2, 2004, reference 02. The claimant appealed this decision but the decision was affirmed. The claimant does not appear to have requalified to receive unemployment insurance benefits following this disqualifying separation on December 4, 2003.

Pursuant to her claim for unemployment insurance benefits filed effective June 13, 2004, the claimant has received no unemployment insurance benefits. Records show that the claimant is disqualified because of a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not because she has received no such benefits.

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 (13), (21) provide:

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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(21) The claimant left because of dissatisfaction with the work environment.

The employer's witness, Janet Strouse, Office Manager and Co-Owner, credibly testified, and the administrative law judge concludes, that the claimant voluntarily left her employment on June 16, 2004. This is confirmed by Employer's Exhibit One. The issue then becomes whether the claimant left her employment with the employer herein without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. Ms. Strouse credibly testified that the claimant quit because she believed that she was entitled to a dollar raise, but no such raise had been promised. Ms. Strouse credibly testified that the claimant was informed that she would receive a \$.25 per hour raise after the end of the pay period following one month of employment but that period had not yet occurred. Ms. Strouse also credibly testified that the claimant had gotten a dollar raise for doing disaster restoration even though the claimant had never been promised that raise. Ms. Strouse also credibly testified that the claimant was never promised any other dollar raise. The claimant had several discussions with Ms. Strouse about the raise in which the claimant would get upset and yell, but Ms. Strouse never yelled at the claimant. The claimant was pregnant and had some discussions with Ms. Strouse about difficulties with prior pregnancies and Ms. Strouse had determined to move the claimant to office work during the claimant's pregnancy, without a reduction in pay and the claimant had agreed. Under the record here, the administrative law judge concludes that there is not a preponderance of the evidence that claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. Rather, the evidence indicates that the claimant left her employment voluntarily because she was dissatisfied with her wages, but she knew the rate of pay when hired, and this is not good cause attributable to the employer. There is also some evidence that the claimant was dissatisfied with her work environment, but this also is not good cause attributable to the employer. Finally, although the claimant did express concerns about her raise, she never indicated or announced an intention to quit if any problems or concerns, including a raise, were not addressed by the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the

employer and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such 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.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on or about June 16, 2004 and filing for such benefits effective June 13, 2004. Since the claimant has received no unemployment insurance benefits she is not overpaid any such benefits.

DECISION:

The representative's decision dated July 1, 2004, reference 01, is reversed. The claimant, Samantha R. Jessen, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

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