

On May 14, 2005, Cevin Hunwick became Ms. Willson's new supervising district manager. Mr. Hunwick had commenced his employment with Hardees on March 8, 2005. In early August, Mr. Hunwick found himself with two general managers without stores to supervise. Mr. Hunwick needed to find a place for the two general managers to work and decided to assign one to assist in the store Ms. Willson managed. Ms. Willson had more experience than the other general manager and got along with the other general manager, but was concerned that the assignment of this general manager to the store she managed was part of a plot to force her out of her position. Ms. Willson's former district manager had advised Ms. Willson as he was leaving his post that a higher-level district manager did not care for Ms. Willson. Ms. Willson concluded that the second general manager would challenge her authority and humiliate Ms. Willson in front of the staff. Ms. Willson believed the employer had planted the same general manager in a colleague's store to force that person out. Ms. Willson is unable to point to an actual causal connection between the placement in the second general manager in the colleague's store and the colleague's subsequent separation from Hardee's. In fact, despite her belief that the colleague had been forced out of his/her store, Ms. Willson really has no knowledge as to why the colleague separated from Hardees.

On August 3 and 10, Mr. Hunwick explained to Ms. Willson, and other general managers under his supervision, the plan to send the unattached general managers to help in other stores. Ms. Willson wanted to select which general manager would be sent to the store she managed. When Mr. Hunwick advised Ms. Willson which general manager would be placed in the store she managed, Ms. Willson concluded her days with Hardees were numbered. On August 17, Ms. Willson advised Mr. Hunwick that she would be quitting, but did not provide a separation date. On August 18, Ms. Willson indicated her last day would be August 29. Ms. Willson asked Mr. Hunwick to keep the other general manager out of her store until she was gone. On August 18, Mr. Hunwick contacted Ms. Willson to advise that the second general manager would be at the store the next day. On August 19, Ms. Willson failed to appear for work. Ms. Willson had someone else bring her keys for the business to the store and did not return to the employment.

Ms. Willson established a claim for benefits that was effective August 21, 2005 and has received benefits of \$2,022.00.

#### REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether Ms. Willson's quit was for 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.25(4). However, before such a quit will be considered for good cause attributable to the employer, the evidence must show that before the claimant resigned (1) the employer was on notice of the condition, (2) the employer was on notice that the claimant might quit if the condition was not addressed, and (3) the employer had a reasonable opportunity to address the claimant's legitimate concerns. See Suluki v.

Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993); and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). The test is 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 Bd., 494 N.W.2d 660 (1993).

The evidence in the record fails to establish intolerable or detrimental working conditions. District Manager Hunwick made a reasonable business decision about how to best utilize an available manager and decided to place the manager in the store Ms. Willson managed. Ms. Willson's authority, salary, work hours and other conditions of employment did not change. A reasonable person would not have quit the employment under the circumstances. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Willson's quit was without good cause attributable to the employer. Accordingly, Ms. Willson is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Willson.

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 benefits Ms. Willson has received constitute an overpayment that Ms. Willson will have to repay.

#### DECISION:

The September 14, 2005, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant. The claimant is overpaid \$2,022.00.

jt/kjf