

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE HODGINS

Claimant

APPEAL NO: 07A-UI-06889-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 12/03/06 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Stream International, Inc. (employer) appealed an unemployment insurance decision dated July 5, 2007, reference 02, which held that Stephanie Hodgins (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 July 31, 2007. The claimant participated in the hearing. The employer participated through Jacqueline Kurtz, Human Resources Recruiter and Staci Albert, Human Resources Generalist. 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 full-time customer service representative from March 19, 2007 through June 18, 2007 when she voluntarily quit her employment. The employer had a new employee who had a restraining order against the claimant because of an assault. The order had been entered in April 2006 and the claimant believed it was going to expire in September 2007. The claimant told the employer about the restraining order and the employer tried to change the claimant's schedule so that she would not be around the other employee. The employer tried to do everything it could to accommodate the claimant but she restricted her availability so the employer was limited in what it could do. The two employees did not work together but on two days might have seen each other. The claimant told the employer she "hated" the other employee so much that she could not work there. The claimant also resigned because she did not want to be in violation of the restraining order against her.

The claimant filed a claim for unemployment insurance benefits effective December 3, 2006 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. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the employer she was resigning. She quit because the employer hired an employee who had a restraining order against the claimant as the result of an assault. The claimant's issues with the other employee were unrelated to work and the employer was willing to change the claimant's schedule but she limited her availability. Her reasons for separating employment were entirely personal and not attributable to the employer.

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

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated July 5, 2007, reference 02, 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 claimant is overpaid benefits in the amount of \$1,351.32.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs