

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDY RETHWISCH**  
Claimant

**APPEAL NO: 12A-UI-03929-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PNQ LLC**  
Employer

**OC: 02-19-12**  
**Claimant: Appellant (1R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 1, 2012. The claimant participated in the hearing. Marsha Nagel, Owner and Connie Tlusty, Store Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shop technician/sales floor worker for Pine Needles Quilt Shop from November 10, 2009 to February 17, 2012. On January 16, 2012, the claimant's husband died unexpectedly. The claimant was off work the two weeks following his death, making one phone call to the employer about her absence. The claimant worked 20 hours between January 30 and February 5; 19 hours between February 6 and February 12; and 16 hours between February 13 and February 19, 2012. The employer spoke to the claimant February 13, 2012, about her no-call no-show absences, missed customer appointments and little to no production when she was there and suggested she make an appointment with a mental health counselor to help her deal with her grief. The claimant stated she would do so in her own time but on February 14, 2012, she did make an appointment with a counselor and worked February 14 and 15, 2012, doing a good job both days. On February 16, 2012, the claimant took the day off. On February 17, 2012, she returned to work for an event the employer was participating in and seemed to be fine according to the store manager. When the event was over the claimant presented a note from the free clinic to the store manager excusing the claimant from work the following week. The store manager called the owner who was in Minnesota and the owner asked to speak to the claimant. When the claimant got on the phone the owner indicated she was confused because the claimant's counselor did not take her off work February 14 through February 16, 2012, but the clinic did. The owner told the claimant

she would not deny her the time off but that they needed a plan going forward for the claimant's return to work because of the claimant's tardiness, absenteeism, failure to be productive when she was there, and the fact that another employee in Minnesota, approximately 60 miles away, was having to come down to Decorah to pick up the slack on fixing the sewing machines. The sewing machines to be fixed were piling up and the employer told the claimant that if she was not able to return to work soon she would have to replace her. The claimant responded, "Okay, I quit." The employer asked her if she was sure that is what she wanted to do and the claimant stated, "Yes, that's what I want to do. I can't take it anymore." The employer asked her again if she was sure and the claimant said she was. The employer said, "Okay. Goodbye." The owner called the store manager who stated the claimant left without telling anyone. The claimant was scheduled the remainder of that day as well as the next day and had customer appointments. She did not call the customers to cancel or ask the store manager to do so. The store manager called the claimant and left her a message stating she would need to return her key and make arrangements to pay her bill with the employer but the claimant did not call back. The employer had no intention of terminating the claimant's employment and had overlooked many violations on the part of the claimant following her husband's death that she otherwise would have been disciplined for committing.

The claimant has claimed and received benefits since her separation from this employer.

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

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

The claimant maintains her employment was terminated although she admits she stated she was "done" and "couldn't do this" and understands how the employer could have interpreted that as a voluntary leaving of employment. Additionally she believes that after her phone call with the owner ended with the employer saying "good bye" and the store manager called to ask for her key after she walked out that meant she was discharged from employment. While the employer was concerned about the claimant's work situation following the death of her husband approximately five weeks earlier, it had no intention of terminating the claimant's employment because she asked for an additional week off. Under these circumstances, the administrative law judge finds the claimant's separation from employment was a voluntary leaving. The remaining question is whether the claimant left for good cause attributable to the employer.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the claimant was understandably having a difficult time dealing with the loss of her husband, the employer was sympathetic and overlooked many violations on the part of the claimant due to the circumstances of the situation. It did, however,

still need to run the business in an efficient manner. When the employer questioned the claimant about the additional week off February 17, 2012, the claimant became upset and quit her job. The employer had the right to inquire into when and how the claimant planned to return to work on a full-time basis due to its business needs. The claimant was taking significant time off and missing customer appointments and the sewing machines brought to the store to be repaired were stacking up. The employer worked with the claimant as long as it could without beginning to question how she planned to return to work as a full-time employee. The claimant has not demonstrated that the mere fact of the employer questioning her about her additional time off and a possible plan for return to full-time duty constitutes unlawful, intolerable or detrimental working conditions as that term is defined by Iowa law. Therefore, benefits must be denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The April 4, 2012, reference 01, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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