

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMANDA SMITH
Claimant

**EXPRESS LANE INC
JOHNSON OIL COMPANY**
Employer

APPEAL NO. 14A-UI-05511-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/27/14
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Express Lane, Inc. (employer) appealed an unemployment insurance decision dated May 19, 2014, (reference 01), which held that Amanda Smith (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 2, 2014. The claimant participated in the hearing. The employer participated through Sue Dravis, Payroll Manager and Tammy Morton, Assistant Manager.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant had previously worked for the employer from December 1, 2011, through June 14, 2012, when she was discharged after she sold alcohol to a minor. She most recently worked as a part-time cashier from August 2, 2013, through March 21, 2014, when she voluntarily quit. The employer's attendance policy provides that a minimum of two hours' notice must be given when an employee is going to be absent and the employee is responsible for finding a replacement. The claimant was aware of the attendance policy.

The claimant's last day of work was March 18, 2014, and she was scheduled to work on March 21, 2014, from 11:00 a.m. to 7:00 p.m. She called in 90 minutes prior to her shift and told another cashier that she could not work because her "sister's water broke." The claimant was asked if she had found a replacement and then replied that she did not have a ride. The employer testified the claimant lived across the street from the convenience store. The claimant began using foul language and asked to have the assistant manager call her.

The claimant called back and spoke with the assistant manager, but she again began to use foul language when stating she would not be working. The assistant manager left to go to the bank to make a deposit and while she was gone, she saw the claimant's sister walking down the street. The claimant's sister lives with her and went to the convenience store quite frequently so the assistant manager knew her.

The assistant manager contacted the manager that morning to obtain permission to issue the claimant a written warning with a one-day suspension. The warning was prepared and placed on the manager's desk. The claimant came in to the convenience store at approximately 2:00 p.m. She saw the write-up on the desk and then threw everything off the desk and onto the floor. The claimant then said, "Fuck you guys, I quit!" She walked out the door after that. The employer sent in copies of pictures, of the items on the floor, to the fact finder but was not aware they were not automatically forwarded for the appeal hearing, so could not use them for the hearing.

The claimant filed a claim for unemployment insurance benefits effective April 27, 2014, and has received benefits after the separation from employment in the amount of \$760.00. Payroll Manager Sue Dravis personally participated in the fact-finding interview and also submitted documents and copies of pictures.

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 § 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 when she threw everything off the desk on March 21, 2014, after she saw the written warning with one-day suspension. She further carried out that intent when she said, "Fuck you guys, I quit" and walked out the door.

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.

It should be noted that the claimant contends she was fired but the facts do not support that contention. Her version of the events was not as credible as the employer's due to several inconsistent statements in her testimony. However, if the separation was characterized as a discharge, the result would be the same. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). On March 21, 2014, the claimant threw everything off the employer's desk, said "Fuck you guys" and then walked out the door. Her offensive and insubordinate actions amount to disqualifying misconduct

sufficient to result in a denial of unemployment insurance benefits, if the separation was viewed as a discharge.

The claimant has been deemed ineligible for benefits, so any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$760.00 for the five-week period ending May 31, 2014. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated May 19, 2014, (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 claimant is overpaid \$760.00 and is required to repay that amount. (This total amount includes the \$456.00 overpayment, which was determined in a decision dated June 27, 2014, reference 04, based on a disqualifying separation from a different employer.)

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css