

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACHELLE L KEMP
Claimant

APPEAL NO. 07A-UI-09527-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MURPHY OIL USA INC
Employer

**OC: 09/09/07 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 1, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 24, 2007. Although duly notified, the claimant did not participate. The employer participated by Ed Grundy, district manager.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer on September 9, 2007. Ms. Kemp last held the position of a full-time assistant manager and was paid by the hour. Her immediate supervisor was Ed Grundy.

On Sunday, September 9, 2007, the claimant telephoned Mr. Grundy, inquiring about interviews that were scheduled to fill the position of store manager to be held the following week. Mr. Grundy assured the claimant that the interviews would be held and that the claimant would be included. Approximately one hour later, Ms. Kemp telephoned the district manager, indicating that she was quitting her job and that the company should pick up company keys. No other reasons were provided by the claimant to the employer for leaving. Assistant managers are not guaranteed that they will be hired to the position of manager if that position opens. Under company policy, interviews are conducted for current employees as well as new hires to fill vacant positions, including the position of store managers.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant chose to voluntarily quit her employment for reasons that were not attributable to the employer. The claimant was informed that she would be included in the hiring process and interviewed as a potential candidate for the position of store manager at the facility where the claimant was last

assigned to work. The claimant knew or should have know that as an assistant manager, she was not guaranteed that she would be placed in the permanent position of manager if that position opened. Although the claimant was given the opportunity to interview for the position, the claimant chose to leave her employment.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily quit employment for reasons that were not attributable to the employer. Benefits are withheld.

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. The claimant is overpaid benefits in the amount of \$979.00.

DECISION:

The representative's decision dated October 1, 2007, reference 01, is hereby reversed. The claimant voluntarily quit for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's job insurance benefit amount, provided the claimant meets all other eligibility requirements of Iowa law. The claimant is overpaid unemployment insurance benefits in the amount of \$979.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw