

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE G WITCHER
Claimant

APPEAL NO. 08A-UI-00760-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 12/09/07 R: 03
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Target, filed an appeal from a decision dated January 11, 2008, reference 01. The decision allowed benefits to the claimant, Laurie Witcher. After due notice was issued, a hearing was held by telephone conference call on February 6, 2008. The claimant participated on her own behalf. The employer participated by Human Resources Representative Amanda Albaugh.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Laurie Witcher was employed by Target from October 22 until December 10, 2007, as a full-time seasonal warehouse employee. At the time of hire, she received a copy of the employee handbook which sets out the attendance policies. Three days' no-call/no-show to work is considered a voluntary quit.

The claimant's last day of work was December 3, 2007. She had made errors in her job for which the supervisor, Ryan, criticized her. He sent her on break and sorted out the problems himself. When she returned, he told her to "finish up the day" and then she was done. The claimant took this to mean she was discharged, but supervisors do not have the authority to discharge employees without consulting the human resources personnel. The supervisor did not consult with human resources about discharging the claimant. Ms. Witcher did not appear for her next three scheduled shifts and was considered a voluntary quit.

Laurie Witcher has received unemployment benefits since filing a claim with an effective date of December 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

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 believed she was discharged when she was told to finish up the day and then was done. However, being told she was "done" could be interpreted that she was done for the day. At no time did Ms. Witcher consult with the human resources personnel to either protest her discharge or discover if she had, in fact, been fired. Her reason for this was because in her experience with other employers, the human resources personnel always "backed up" the supervisor.

There is insufficient evidence to establish the claimant was fired. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984). The claimant is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 11, 2008, reference 01, is reversed. Laurie Witcher is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,144.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw