

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA A MCKAY
Claimant

APPEAL NO. 12A-UI-13961-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWN CUSTOMER DELIGHT GROUP INC
Employer

OC: 10/28/12
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 16, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 31, 2013. The claimant did participate. The employer did participate through Kelly Betts, Office Manager; Dawn Rath, Area Supervisor and was represented by Kelly Nolan of Employer's Unity.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general manager of a McDonalds restaurant full time beginning June 1, 2011 through October 2, 2012 when she voluntarily quit her employment. The claimant was working at a store on the south side of Des Moines and was on an improvement plan. When the claimant was hired she was not promised that she would not be allowed to pick and choose which store she worked at. The claimant was told that due to volume of sales she was going to be moved to the Ankeny store to help co-manage that store at the same rate of pay with the same duties as manager. The claimant was never told that she was being moved to Ankeny because she was being disciplined or because she was on an improvement plan. The claimant decided to quit her job rather than drive from Des Moines to Ankeny to work. The employer's choice to move managers where they were needed due to sales volume is not an intolerable work environment. Since the claimant admitted she was never promised that she could pick and choose what store she worked at and because the driving distance is minimal, the claimant's decision to quit was without good cause attributable to the employer.

Claimant has received unemployment benefits since filing a claim with an effective date of October 28, 2012.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.25(21), (27) and (30) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(27) The claimant left rather than perform the assigned work as instructed.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

The claimant was hired with the understanding that she would work at any of the stores she was assigned to work at. The claimant was to be moved from a Des Moines store to an Ankeny store solely to meet the business needs of the employer not due to any discipline. The commuting distance was not substantial and the claimant knew when hired she could be assigned to work at any of the stores. The claimant's refusal to perform the same duties at the Ankeny location is not good cause attributable to the employer for her quitting. An employer has a right to expect employees to perform their job duties. The claimant simply did not want to perform the required work. Her quitting was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. 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 may 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. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The November 16, 2012 (reference 01) decision is reversed. Claimant voluntarily left the 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.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll