

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA A HOUSE

Claimant

APPEAL NO. 08A-UI-07211-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JEWEL FOOD STORES INC

Employer

**OC: 06/15/08 R: 03
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Jewel Food Stores, Inc. (Jewel) filed an appeal from a representative's decision dated August 1, 2008, reference 02, which held that no disqualification would be imposed regarding Carla House's separation from employment. After due notice was issued, a hearing was held by telephone on August 25, 2008. Ms. House participated personally. The employer participated by Bill Long, Store Director, and Diane Ryan, Kitchen Manager. Exhibits One through Eight were admitted on the employer's behalf. The employer was represented by Beverly Lamb of Talx Corporation.

ISSUE:

At issue in this matter is whether Ms. House was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. House began working for Jewel on June 6, 2007. She worked from 18 to 20 hours each week as a clerk. On or about March 28, 2008, she gave two week's notice that she was quitting. She told the employer she was moving out of state to get married. The employer was aware that Ms. House had experienced some domestic abuse issues during the course of her employment. The alleged abuser shopped at the store where she worked but never accosted her at work.

Prior to the effective date of her resignation, Ms. House was discharged because of her attendance. The final absence was on April 4, 2008 when she missed work because her son was sick. She had been warned that her continued employment was in jeopardy because of her absences. She was notified of her discharge on April 5, 2008. Ms. House filed a claim for job insurance benefits effective June 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

Ms. House had already given notice of her intent to quit when she was discharged on April 5, 2008. Where an individual is discharged prior to the effective date of resignation, she is allowed benefits from the last day worked until the effective date of the resignation. See 871 IAC 24.25(38). In the case at hand, Ms. House did not file her claim for job insurance benefits until after the proposed date of resignation. Therefore, there is no issue concerning her entitlement between the last day worked and the effective date of resignation. Because Ms. House initiated the separation by giving notice of her resignation, it shall be analyzed as a quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. House planned to leave her part-time employment effective April 12, 2008 for personal reasons. She told the employer she was moving out of state. An individual who leaves employment to relocate is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(2). The term “good cause attributable to the employer” generally refers to some matter over which the employer has control. The personal issues that contributed to Ms. House's decision to quit Jewel were not within the control of the employer. Although she may have had a compelling personal reason for leaving, the reason was not attributable to the employer. Therefore, the separation effective April 12, 2008 was a disqualifying event.

An individual who voluntarily quits part-time employment for no good cause attributable to the employer may still qualify for job insurance benefits if there are sufficient other wage credits in the base period of the claim to establish a valid claim. 871 IAC 24.27(96). Wage credits earned with the employer that was quit may not be used on the claim until the individual has earned at least ten times the weekly benefit amount in insured wages after the separation. This matter shall be remanded to Claims to determine if Ms. House has sufficient other wage credits on which to base a valid claim.

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.

Ms. House has received job insurance benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, Iowa law requires that overpayments be repaid. Iowa Code section 96.3(7). Under certain circumstances, an overpayment based on a reversal of a decision regarding a separation from employment can be waived. The overpayment may be waived if the initial award of benefits was not based on fraud and the employer failed to participate in the fact-finding interview that resulted in the allowance of benefits. This matter shall be remanded to Claims to determine the amount of any overpayment and whether such overpayment must be repaid.

DECISION:

The representative's decision dated August 1, 2008, reference 02, is hereby reversed. Ms. House voluntarily quit her part-time employment with Jewel effective April 12, 2008 for no good cause attributable to the employer. Wage credits earned with Jewel may not be used on the claim until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Ms. House has sufficient other wage credits in the base period of her claim to establish a valid claim and to determine whether there is an overpayment of job insurance benefits that must be repaid.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs