

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S SCOLARO
Claimant

APPEAL NO. 08A-UI-10523-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMERCIAL TOWEL SERVICE INC
Employer

OC: 10/05/08 R: 03
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Commercial Towel Service, Inc. filed an appeal from a representative's decision dated October 30, 2008, reference 01, which held that no disqualification would be imposed regarding Melissa Scolaro's separation from employment. After due notice was issued, a hearing was held by telephone on November 25, 2008. The employer participated by John DeYoung, Plant Manager. Ms. Scolaro did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Scolaro was employed by Commercial Towel Service, Inc. from April of 2006 until October 5, 2008. She was last employed full time as the supervisor in the garment area. On the morning of October 5, she told the plant manager that she had to leave at 9:30 a.m. but did not state a reason why. She was told she could not leave but left anyway.

Ms. Scolaro was next scheduled to work on October 7. Her time card had been pulled so that she would have to retrieve it from a manager to clock in. It was the employer's intention to discipline her for leaving work early on October 5 after permission to leave had been denied. When she saw on October 7 that her time card was pulled, Ms. Scolaro left the workplace. She did not attempt to speak to a manager to find out why her time card was pulled. The employer did not hear further from her until she came to get her paycheck on October 9. Continued work would have been available if she had continued reporting for work.

Ms. Scolaro filed a claim for job insurance benefits effective October 5, 2008. She has received a total of \$1,035.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. Scolaro abandoned her job when she stopped reporting for available work. She was not told she was fired. It was not reasonable for her to conclude that she had been fired based solely on the fact that her time card had been pulled. For the above reasons, the administrative law judge concludes that the separation was initiated by Ms. Scolaro and is, therefore, a voluntary 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. Scolaro did not participate in the hearing to give testimony as to why she stopped going to work. The evidence of record does not establish any good cause attributable to the employer for the quit. As such, benefits are denied.

Even if the administrative law judge were to conclude that Ms. Scolaro was discharged, she would still not be entitled to job insurance benefits. She walked off the job on October 5 after the manager told her she could not leave. She did not cite any emergency or other good cause for having to leave work. Her insubordination in leaving work after permission to do so was denied constituted a substantial disregard of the employer's standards, especially in light of the fact that she was a supervisor. As a supervisor, it was expected that she would set the standard for those working under her. Her conduct in walking off the job on October 5 would be sufficient to result in a denial of job insurance benefits if the separation had been a discharge.

After considering all of the evidence, the administrative law judge concludes that Ms. Scolaro was separated from employment for reasons that disqualify her from receiving job insurance benefits. She has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Scolaro will be required to repay benefits already received.

DECISION:

The representative's decision dated October 30, 2008, reference 01, is hereby reversed. Ms. Scolaro quit her employment for no 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 job insurance benefit amount, provided she satisfies all other conditions of

eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Scolaro will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs