

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

WINNETTA WALKER  
34892 - 320<sup>TH</sup> ST  
RUTHVEN IA 51358-8573

WESSELS OIL CO INC  
PO BOX 176  
PALMER IA 50571

Appeal Number: 06A-UI-08077-BT  
OC: 07/09/06 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Wessels Oil Company, Inc. (employer) appealed an unemployment insurance decision dated August 8, 2006, reference 01, which held that Winnetta Walker (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was on August 28, 2006. The claimant participated in the hearing. The employer participated through Lisa Abens, District Manager and Michelle Menke, Supervisor.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time manager from March 6, 2006 through July 6, 2006, when she voluntarily quit. At the time of hire, she was told she had to cover hours if staff were sick and work "pretty much anytime" but had to work at least an eight hour shift. The employer told the claimant she could possibly work into a 9:00 a.m. to 5:00 p.m. schedule but her schedule would always vary. Approximately 45 days after she was hired, the assistant manager quit and the claimant started scheduling her own hours from 8:00 a.m. to 5:00 p.m., Mondays through Fridays with very few weekends.

The manager was responsible for opening the store at 4:00 a.m. but the claimant had a new assistant manager open the store even though he did not have the authority to write checks. Several vendors arrived with deliveries prior to 8:00 a.m. Beer cannot be charged so if the claimant is not present to pay for the merchandise, none is left and the store does not have beer in its coolers. When the assistant manager was not able to reach the claimant, he began signing checks for beer so that the store would have beer to sell. The employer hired a store supervisor, Michelle Menke, on June 19, 2006 and Ms. Menke spoke to the claimant about her schedule on June 26 and June 29, 2006. The claimant was told that her failure to open the store was creating problems and she needed to open the store at 4:00 a.m. and be available during the mornings. The claimant quit instead of working the early hours.

The claimant filed a claim for unemployment insurance benefits effective July 9, 2006 and has received benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant quit her employment due to an alleged change in the contract of hire. The law presumes a claimant has left employment with good cause when she quits because of a change in the contract of hire. 871 IAC 24.26(1). "Change in the contract of hire" means a substantial change in the terms or conditions of employment. Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id.

When the claimant was hired, she was informed it was her responsibility to open the store and work "pretty much anytime." Even though she began scheduling herself from 8:00 a.m. to 5:00 p.m., Mondays through Fridays, she was not hired for those hours. The change in the claimant's hours is not a substantial change in her contract of hire.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She has not satisfied that burden and benefits are denied.

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.

#### DECISION:

The unemployment insurance decision dated August 8, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,004.00.

sda/pjs