

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROXANNE M HERBER**  
Claimant

**APPEAL NO. 09A-UI-17383-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 10/18/09**  
**Claimant: Respondent (2-R)**

Section 96.5(1)a – Quit

**STATEMENT OF THE CASE:**

The employer, Fareway, filed an appeal from a decision dated November 5, 2009, reference 01. The decision allowed benefits to the claimant, Roxanne Herber. After due notice was issued a hearing was held by telephone conference call on December 31, 2009. The claimant participated on her own behalf. The employer participated by Grocery Manager Doug Cosgrove and was represented by corporate counsel Garret Picklapp.

**ISSUE:**

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

**FINDINGS OF FACT:**

Roxanne Herber was employed by Fareway from April 5, 2008 until October 12, 2009 as a part-time cashier. On October 8, 2009, Grocery Manager Doug Cosgrove had given the claimant a warning because she had taken a longer break than was allowed. Earlier that week he had also admonished her for not wearing black slacks as required and talking too long with customers.

October 12, 2009, Mr. Cosgrove also talked with the claimant because other employees reported she had been timing everyone's breaks after she had received the warning about her own break being too long. She denied the matter and went to the front end to begin her shift. About 15 minutes after the start of her shift she took her drawer to the office, put it in the cabinet and left. She maintained she told Mr. Cosgrove she was "done" but he did not hear her. She did tell the other cashiers she was "done" and one of them reported to the grocery manager the claimant had quit.

Ms. Herber felt Mr. Cosgrove created a hostile and negative work environment because he had disciplined her about wearing slacks which were not black and about taking a longer break than allowed. At no time did she discuss her concerns with him, the district manager or the human resources department.

Roxanne Herber has received unemployment benefits since filing a claim with an effective date of October 18, 2009.

**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 quit because she felt the work environment was negative and hostile. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The claimant acknowledged she did not make any good-faith effort to inform the district manager or the human resources department of her concerns. In order for good cause attributable to the employer to exist, a claimant with grievances must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

She also did not explain why, after 18 months of the alleged negative and hostile work environment, she suddenly quit on October 12, 2009, when the grocery manager told her others had complained she was timing the breaks of other employees.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of November 5, 2009, reference 01, is reversed. Roxanne Herber is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs