

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY K FLIPPO

Claimant

APPEAL NO. 06A-UI-12469-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK UNIFORM & CAREER APPAREL

Employer

**OC: 11/26/06 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Aramark Uniform & Career Apparel (employer) appealed a representative's December 18, 2006 decision (reference 01) that concluded Beverly K. Flippo (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2006. The claimant participated in the hearing with her attorney, Robert Fulton. Jon Wagner, the production manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working full-time for the employer on June 18, 2001. The claimant worked as a utility worker. The claimant's back bothered the claimant for quite a while. In December 2005, the claimant was off work because of reported back problems. After being treated by her personal physician in December 2005, the claimant reported she had a work-related injury and filed a claim for workers' compensation. The claimant understood her health care provider would not pay the cost of treating her back problems because this health issue was the result of a work-related injury.

The claimant went to the employer's workers' compensation physician and he initially put her on light-duty work. Ultimately, the workers' compensation carrier denied the claimant's claim. In March or April 2006 the employer's workers' compensation carrier informed the claimant's

attorney that the claimant's back problems were not work-related. The claimant did not see a doctor between January 23, 2006 and November 2006.

As a utility worker, the employer assigned the claimant to various jobs that needed to be done. Since January 23, 2006, the employer had no knowledge the claimant had any work restrictions. The employer did not receive any work restrictions from a physician. Prior to her employment separation, the claimant worked at a job that another employee who was on maternity usually did. When the other employee returned to work, the employer assigned the claimant to another job. This new job required more lifting, bending and twisting. The claimant did the new job for about a week. The new job aggravated the claimant's back and she began experiencing more pain.

On September 14, 2006, the claimant refused to do the new job any longer. The claimant wanted the previous job back. The claimant told her supervisor the "new" work bothered her back on September 14. On September 15, the claimant talked to Wagner. The claimant told him she was quitting for personal reasons because she was not getting along with other employees at work. The claimant did not tell him that the work bothered her back.

The claimant established a claim for unemployment insurance benefits during the week of November 26, 2006. The claimant filed claims for the weeks ending December 2 through January 13, 2007. The claimant received her maximum weekly benefit amount of \$234.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit her employment on September 15, 2006. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits employment with good cause if she leaves employment because continued employment would result in a serious health problem for the claimant. Before a claimant quits for this reason, the claimant must present competent evidence to establish adequate health reasons for quitting. Also, a claimant must advise the employer that she intends to quit for health reasons unless the employer can make reasonable accommodations for the claimant. 871 IAC 24.26(6)(b).

In this case, the work the claimant performed may have aggravated her back condition, but the claimant failed to present competent evidence showing adequate health reasons to justify termination of her employment. Since the claimant had been working since January without complaining about problems with her back and a doctor did not advise her to quit because the job aggravated her back problems, the claimant did not establish reasons that qualify her to receive unemployment insurance benefits. As of November 26, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending December 2, 2006, through January 13, 2007. The claimant has been overpaid \$1,638.00 in benefits she received for these weeks.

DECISION:

The representative's December 18, 2006 decision (reference 01) is reversed. The claimant voluntarily quit her employment for compelling personal reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of November 26, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending December 2, 2006 through January 13, 2007. The claimant has been overpaid and must repay a total of \$1,638.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw