

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

TAMI J VITTITOE
APT 407
300 'J' ST
CEDAR RAPIDS IA 52404

SDH EDUCATION WEST LLC
c/o JON-JAY ASSOCIATES INC
PO BOX 6170
PEABODY MA 01961

Appeal Number: 06A-UI-05285-HT
OC: 12/18/05 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, SDH Education West LLC (SDH), filed an appeal from a decision dated May 15, 2006, reference 01. The decision allowed benefits to the claimant, Tami Vittitoe. After due notice was issued, a hearing was held by telephone conference call on June 7, 2006. The claimant participated on her own behalf. The employer participated by General Manager Tom Wieseler.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tami Vittitoe was employed by SDH from February 5, 2003 until April 18, 2006. She was a full-time supervisor.

On April 18, 2006, General Manager Tom Wieseler met with the claimant to review a constructive criticism regarding her attendance. She had missed 32 days since late August 2005 and other employees were unhappy having to do her job on such a frequent basis. He asked if her absenteeism would change because he could not go through another school year with a full time position being vacant 32 times. She said she could "not predict the future."

It was not the general manager's intention to discharge her but to try and find alternatives or some way to improve her attendance. Ms. Vittitoe was offered the options of going part-time, working at another account or finding some alternative for taking care of her children, which was the major reason she missed so much work. She became angry saying that she would not work for any other of the employer's account and telling him, "You are probably happy because I am their last nigger here." At that point she left in the middle of the shift and did not return.

Tami Vittitoe has received unemployment benefits since filing a claim with an effective date of December 18, 2005. Her claim has been continuous with no additional claim being filed after the separation date.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The claimant maintains she was fired but there is nothing in the record to support this. She was being counseled about a substantial absenteeism rate and efforts were being made to find some situation where her attendance could improve or else not have such a negative impact on

the employer's business. Her hostility toward the counseling apparently caused her to believe she had been fired when she had not. Her decision to leave in the middle of the shift, without authorization, must be considered a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 15, 2006, reference 01, is reversed. Tami Vittitoe is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,201.00.

bgh/kkf