

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

DENISE K HELLE
2795 – 16TH AVE
MARION IA 52302

THE UNIVERSITY OF IOWA
c/o DAVE BERGEON EMPLOYEE
RELATIONS
121 R UNIVERSITY SERVICES
BUILDING
IOWA CITY IA 52242

AMENDED

Appeal Number: 04A-UI-10403-S2T
OC: 08/29/04 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 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's September 22, 2004 decision (reference 01) that concluded Denise Helle (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2004. The claimant participated by written statement. The employer participated by David Bergeon, Human Resources Specialist; and Kris Anne Duhaime, Program Assistant. The claimant's statement was marked for identification as Exhibit A. Exhibit A was received into evidence.

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 hired on October 23, 2000, as a full-time project assistant. On June 24, 2004, a co-worker of the claimant complained to the employer that the claimant sat at the co-worker's desk over the lunch break and deleted the co-worker's personal e-mails. The employer investigated the information by interviewing a temporary worker. The temporary worker told the employer she never sat at the co-worker's desk. The employer also interviewed the claimant. The claimant denied any wrong doing and told the employer it might be the temporary worker. The employer told the claimant there were security cameras in the area and the employer would view the tapes as soon as possible to put the matter to rest. The claimant became agitated about the situation. The employer told the claimant she had nothing to worry about if she was not involved. The claimant went back to work. Later that day the employer received a resignation letter from the claimant.

After the claimant resigned the employer viewed the videotape of the co-worker's desk. The videotape clearly showed the claimant sitting at the co-worker's desk viewing the co-worker's e-mail.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. 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.

The claimant has received benefits in the amount of \$2,576.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment, which must be repaid.

DECISION:

The representative's September 22, 2004 decision (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 \$2,576.00.

bas/kjf/b