

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET L WICKETT

Claimant

APPEAL NO. 13A-UI-13382-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLIOT OIL COMPANY

Employer

OC: 11/10/13

Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated December 4, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on December 26, 2013. The claimant participated personally. The employer participated by Brenda Parsons, manager of Osceola Travel Plaza. The record consists of the testimony of Janet Wickett and the testimony of Brenda Parsons. Official notice is taken of agency records.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is the BP gas station located at the Osceola Travel Plaza in Osceola, Iowa. The claimant worked for the employer as a part-time cashier. The claimant's last day of work was September 22, 2013. She informed the employer that she needed to take some time off because of health and family problems. She wanted to take two weeks off and the employer told her that she could take a month off in order to rest and relax.

After the claimant had been off work for approximately two weeks, she went to the store to get a drink. She told the manager, Brenda Parsons, that she did not want to work and that she wanted to retire.

The claimant established an original claim for unemployment insurance benefits with an original claim date of November 10, 2013. A fact-finding interview was scheduled for December 3, 2013. The claimant participated in the fact-finding interview. The representative used the

wrong number to call the employer. The employer was ready to participate in fact finding. The claimant has been paid unemployment insurance benefits since the week ending November 16, 2013.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the credible evidence in this case is that the claimant decided to retire rather than return to work for the employer. The employer had given the claimant time off because she was experiencing health problems, specifically fatigue, as a result of heart difficulties. Before the leave of absence had expired, the claimant told the employer she did not think she could go back to work. The employer accepted the claimant's decision. The employer did not terminate the claimant and wanted the claimant to return to work. The most reasonable inference from the evidence is that the claimant made the decision to sever the employment relationship and she did so for personal reasons. Since the claimant voluntarily quit without good cause attributable to the employer, benefits are denied.

The next issue is overpayment of benefits. The unemployment insurance law required benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a,-b

The claimant received benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

It does not appear that the fact-finding documents were sent to the parties. The employer admits that it did not participate in the fact finding but claims this was due to agency error. The representative, according to the employer, failed to call the right number. Since it does not appear that the agency considered whether there was agency error that caused the employer's non-participation in fact finding, this case will be remanded to the claims section. Specifically, the claims section will determine whether the employer's failure to participate in fact finding was due to agency error. The claims section shall issue a decision to both parties on whether the

claimant should be required to repay the benefits and/or if the employer's account shall be charged. This decision shall allow for appeal by either party to the Appeals Bureau.

DECISION:

The decision of the representative dated December 4, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant has been overpaid unemployment insurance benefits. This matter is remanded to the claims section to determine whether the employer's failure to participate in fact finding was due to agency error and whether the claimant should be required to repay the benefits and/or if the employer's account shall be charged.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs