

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEANNIE E STALEY**  
Claimant

**APPEAL NO. 10A-UI-06577-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HIGHWAY 61 FUELS LLC**  
Employer

**OC: 04/04/10**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 26, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on August 30, 2010. Claimant participated. Employer participated by Cindy Fullerton, current manager, and Cassie Morrison, receptionist. The employer was represented by Terrence Mealy, attorney at law. The record consists of the testimony of Jeannie Staley; the testimony of Cassie Morrison; the testimony of Cindy Fullerton; and Employer's Exhibits 1-10.

**ISSUE:**

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 a gas station and convenience store located in Muscatine, Iowa. The claimant was hired on January 19, 2009, as the manager. She worked five or six days a week from 6:00 a.m. to 2:00 p.m. She earned \$8.25 per hour.

On March 18, 2010, Cindy Fullerton met with the claimant to discuss some disciplinary matters with her. The station had lost approximately \$36,000.00 during the year that the claimant had managed the store and Ms. Fullerton wanted to go over some of the reasons, such a failure to manage inventory, and not being present in the store to service customers. The claimant was informed that she was being demoted to a cashier position, but she would not lose any pay or hours as a result of that demotion. The claimant quit three times during this conversation, only to change her mind. At approximately 2:00 p.m., the claimant called and spoke to Cassie Morrison, who was a receptionist. She told Ms. Morrison that she was quitting. She changed her mind again and reported to work on March 19, 2010.

On March 19, 2010, she left before her shift was over. She delivered a letter in her own handwriting to her employer, which stated in part: "I really do like working at the station. But with every things that has happened with what Cindy & Brenda schemed up. I feel its [sic] better for me to leave." (Exhibit 3) The claimant believed that Brenda, another employer, caused problems for her because the claimant refused to lend Brenda \$4,000.00. The claimant's letter also included the key. The employer had no intention of terminating the claimant. Work was available for the claimant at the time she resigned.

### **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.

871 IAC 24.25(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

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 greater weight of the evidence established that it was the claimant who initiated the separation of employment. She was being demoted from manager to cashier but this demotion did not change her hours or her wages. Of critical importance is that the claimant's resignation letter says nothing about quitting because of the demotion. Rather she cites problems with two other employees for her decision to quit. She believes that there was "scheming" between these two employees because she refused to lend one of them money. The inability to work with other employees is not good cause attributable to the employer. The administrative law judge also concludes that there was not a substantial change in the contract of hire. Accordingly, benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the claims section for determination.

**DECISION:**

The decision of the representative dated April 26, 2010, 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 overpayment issue is remanded to the claims section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs