

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY FORD**  
Claimant

**APPEAL NO. 08A-UI-07397-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATERING BY MARLIN'S INC**  
Employer

**OC: 04/06/08 R: 03**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Catering by Marlin's, Inc. (employer) appealed an unemployment insurance decision dated August 6, 2008, reference 02, which held that Kathy Ford (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2008. The claimant participated in the hearing. The employer participated through Amber Garry, Human Resources Director. Claimant's Exhibits A through D were admitted into evidence. 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.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

**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 employed as a full-time cook from May 20, 2008 through July 7, 2008. She voluntarily quit her employment because she contends the employer refused to give her 32 to 40 hours per week. However, the employer presented evidence that the claimant did work full-time hours except for three specific weeks. She did not work full-time hours during the first and last week of employment simply due to the fact that she was not employed for the entire pay period. The only other week she did not work full-time hours was the week ending July 2, 2008 and that is because she requested three days off work. The claimant was paid for the following hours:

Pay period May 20, 2008 to May 21, 2008	14.79 hours
Pay period May 22, 2008 to June 4, 2008	39.52 hours requested off June 3 35.8 hours
Pay period June 5, 2008 to June 18, 2008	39.13 hours requested off June 9 44.06 hours
Pay period June 19, 2008 to July 2, 2008	24.18 hours requested off June 20, 27, 29 34.06 hours
Pay period July 3, 2008 to July 7, 2008	13.09 hours refused work on July 4 requested off July 6

The claimant filed a claim for unemployment insurance benefits effective August 6, 2008 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling the employer she quit. She contends she quit her employment because she was not getting full-time hours but the evidence shows that she was working full-time hours.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated August 6, 2008, reference 02, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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