

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIBLEKA PUGH
Claimant

APPEAL NO. 07A-UI-01021-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA INC
Employer

**OC: 12/31/06 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Family Dollar Stores of Iowa, Inc. (employer) appealed an unemployment insurance decision dated January 19, 2007, reference 01, which held that Shibleka Push (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 February 13, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through David Moore, District Manager. 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 qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from approximately April 6, 2006 through November 24, 2006, when she walked off the job. She called the district manager that day and stated that she "had it with the manager". She was in a shouting match with the manager when they were unloading a truck and she was not going to "put up with it anymore." The claimant reported the manager told her to leave and the district manager stated that it was probably a good idea to leave for the day considering the circumstances. The claimant left and never returned or contacted the employer again. The district manager later received a call from the store manager, who gave her notice to quit. The store manager reported that the claimant threw a phone at the manager's head and that was why she was leaving. The employer subsequently tried to reach the claimant but was not successful.

The claimant filed a claim for unemployment insurance benefits effective December 31, 2006 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 when she left on November 24, 2006 and never called or returned to work. She failed to participate in the hearing and presented no evidence as to why she quit her employment.

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:

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 19, 2007, 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 \$438.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw