

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

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

STATEMENT OF THE CASE:

The employer, Regional Environmental Improvement Commission (REIC), filed an appeal from a decision dated February 8, 2005, reference 01. The decision allowed benefits to the claimant, Nina Bullers. After due notice was issued a hearing was held in Cedar Rapids, Iowa, on April 5, 2005. The claimant participated on her own behalf and was represented by Attorney Jill Zwagerman. The employer participated by Environmental Director Richard Heller and was represented by Attorney Brett Nitzschke as substitute for Brian Gruhn. Exhibits A through E and One through Seven were admitted into the record.

Appeal Number: 05A-UI-01635-H
OC: 01/09/05 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)

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nina Bullers was employed by REIC from June 28, 1995 until January 12, 2005. She was a full-time clerical worker. Shortly after her hire date, the employer passed a special resolution allowing the claimant to make deposits into its bank account as the financial institution had changed and Ms. Bullers lived in the same town, and in close proximity to, the nearest branch bank.

Ms. Bullers quit on January 12, 2005, claiming harassment and intolerable working conditions. The precipitating event was allegedly because the employer's independent accountant, LaVerne, had requested Environmental Director Richard Heller to purchase some accounting software called Quick Books. This request had been made in mid-December 2004 and the claimant had passed along the request. She maintained that when the accountant returned on January 12, 2005, Mr. Heller had not purchased the software and she felt "humiliated." She told Mr. Heller she was quitting, surrendered her office keys and left. Mr. Heller had, in fact, already purchased the software.

The claimant submitted evidence of other incidents which contributed to her decision to quit, maintaining Mr. Heller had brought a gun to work, engaged in political activity during work hours, read the Bible to her while she was working, and left politically oriented magazines around the office and told her she should read them. The employer acknowledged bringing the gun to work but only because the claimant has asked him to, she was considering buying a handgun of her own and wanted to look at his. She subsequently did buy a gun and brought it to work, asking Mr. Heller to show her how to clean it. The magazines were given to her with a suggestion she should read an article here and there, but it was her decision whether or not to do so and there were no disciplinary repercussions when she did not do so. He did receive calls in the office of a political nature, but did not initiate any, and denied reading the Bible to the claimant.

She felt she was being "treated differently" as she had to pay for any personal long-distance phone calls and had to take vacation, rather than bereavement leave, when her brother died. However, the county personnel policies, which governed the REIC, specifically excluded siblings from the definition of "immediate family" for purposes of bereavement leave, and everyone had to pay for their own personal long-distance calls. However, the vast majority of these allegedly intolerable incidents occurred at least a year or two before she decided to quit. She did tell a member of the REIC board in May 2004 she would quit if "things didn't change."

The employer presented evidence that the claimant's reasons for quitting were pretextual. The employer's bank had contacted Mr. Heller in early December 2004 because there had been four cash deposits on December 7, 2004, totaling more than \$10,000.00. The law requires the bank to notify the account holder, and the federal government, of any such large cash deposits. The REIC does take in money for assessments and permits, but usually in the form of checks. This amount of cash was highly unusual.

This prompted further investigation and the employer reviewed the deposit slip book in January 2005, and found the claimant had made cash deposits from December 2 through 29, 2004, totaling \$33,120.00. This is a great deal more cash than the REIC office would take in during an entire year, much less in a single month. It was also determined that Ms. Bullers had made a cash deposit into the employer's account, in the amount of \$1,150.00, several days after she had quit.

Nina Bullers has received unemployment benefits since filing a claim with an effective date of January 9, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant had alleged intolerable work conditions as the reason for her discharge. The record does not support this. The claimant's own admissions indicated there had been no incidents for at least eight months prior to her decision to quit. The precipitating event was that the environmental director had allegedly not purchased the software recommended by the accountant. It is inexplicable to the administrative law judge that this would be conduct so egregious and detrimental to the claimant that she was compelled to quit.

However, the judge does find substantial merit in the employer's assertions the claimant quit because of the audit being done of the bank account, precipitated by the large number of unexplained cash deposits made by Ms. Bullers. It appears the claimant quit rather than face the possibility of discharge once the new accounting software was installed, which would more accurately track the money received in the office, and the audit of her cash-handling habits revealed possible irregularities.

The large number of cash deposits made by the claimant during December 2004, adds additional support to the theory that she quit rather than have her questionable handling of the employer's cash receipts scrutinized. The administrative law judge concludes the claimant did not have good cause attributable to the employer for quitting and she is disqualified.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 8, 2005, reference 01, is reversed. Nina Bullers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$3,100.00.

bgh/sc