

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE A PRITCHARD
Claimant

APPEAL NO. 10A-UI-06110-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 03/21/10
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 12, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 17, 2010. Claimant participated. Employer participated by Cynthia Stickel, front end manager. The employer was represented by Maureen Cosgrove, attorney at law. The record consists of the testimony Lynne A. Pritchard; the testimony of Cynthia Stickel; and Employer's Exhibits 1-2.

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 claimant worked for the employer at its distribution center in Shelby, Iowa. The claimant wanted to move back to Fort Dodge, Iowa. On January 14, 2010, she prepared a written request for transfer. In response to a question on her availability at the new store, the claimant wrote: "what ever is available." (Exhibit 1, p. 1) The claimant was offered a position as a part time cashier at the store in Fort Dodge. She started on February 8, 2010. The claimant was not guaranteed any specific schedule when she was hired. The claimant was raising a son on her own and explained to Cynthia Stickel, front end manager, that she preferred to work days. Ms. Stickel told the claimant that she had to work at least one and possibly two nights a week to close the store. All cashiers, full time and part time, had to perform the closing function.

The claimant was under the impression that if she worked nights, she worked from 4:00 to 9:00 p.m. The employer, however, had changed its hours of operations and if an individual worked nights, the quitting time was 10:30. The employer posted a sign near the time clocks to inform employees of the change in store hours and to check their schedules. The claimant was

caught off guard by this change and did not feel that she could work those hours because of child care. She did work one night until 10:30 p.m.

The claimant submitted her two-week notice on March 17, 2010. In her voluntary separation form, she cited the main reason for quitting as having to work until 10:30 p.m. and that she could not leave her son by himself. (Exhibit 2) She did work the following Sunday. After that, the claimant stopped coming to work. Work was available for the claimant had she wished to continue working for the employer.

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(17) 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:

(17) The claimant left because of lack of child care.

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 evidence in this case established that it was the claimant who initiated the separation of employment. The claimant quit her job when she found out that she would have to work until 10:30 p.m. one night per week. The claimant could not arrange for child care. When the claimant was hired she was told that she would have to work at least one night per week to close. Shortly after the claimant started, the employer decided to keep the store open until 10:00 p.m., which meant that the claimant had to stay until 10:30 to close. The claimant's supervisor told the claimant she would try to limit the claimant to working only one night per week. This was not acceptable to the claimant and she quit.

Although the claimant may have been unaware of the change in her schedule and did not realize that she would have to work until 10:30 one evening per week, this does not constitute a misrepresentation on the part of the employer. The claimant told that employer when she requested a transfer that she was available to work when work was available. The store hours changed slightly after the claimant came to work and this lengthened her work day by one and

one half hours on one night per week. The claimant knew she was working in a store and her hours would vary. The employer never guaranteed any specific schedule. The claimant may have had good personal reasons for quitting, but those reasons are not good cause attributable to the employer. 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 12, 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs