

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FAY L AHL**  
Claimant

**APPEAL NO. 11O-UI-09028-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BATH & BODY WORKS LLC**  
Employer

**OC: 02/06/11  
Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Relief from Benefit Charges/Relief from Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 17, 2011 (reference 01) decision that allowed benefits. Another administrative law judge held an initial hearing and allowed benefits at which point the employer appealed to the Employment Appeal Board (EAB), which remanded for another hearing without vacating the administrative law judge's decision (11A-UI-03845-HT dated April 20, 2011). After due notice was issued, a hearing was held by telephone conference call on September 16, 2011. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through store manager Brandi Neeved and was represented by Tom Kuiper of Talx.

**ISSUE:**

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer, if so, whether employer is liable for related benefit charges, and if not, whether she is overpaid benefits as a result.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a co-manager at that store in March 2010 and was separated from employment on February 6, 2011. She resigned to look for another job because her work performance was not up to par so thought she might go back to school. Her job was not in jeopardy and continued work was available. The only reason an employee's name might go into the data base is if they are fired because of theft from the company. That was not the case here.

Claimant has received unemployment benefits in the amount of \$5,974.00 since filing a claim with an effective date of February 6, 2011.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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(3), (26), (33) 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 § 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 § 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:

(3) The claimant left to seek other employment but did not secure employment.

(26) The claimant left to go to school.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Since claimant left to seek other employment and/or attend school because she thought her job performance was not acceptable, even though she had not been warned her job was in jeopardy for any reason, the separation was without good cause attributable to the employer.

The administrative law judge further concludes the employer shall be relieved from benefit charges and the claimant has not been overpaid benefits due to the two decisions (the representative's decision and the administrative law judge (ALJ) decision the EAB did not vacate when remanding for this hearing) allowing benefits prior to this decision.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether

any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

While it is this administrative law judge's opinion that the unemployment compensation fund should not be charged in this circumstance because the EAB remanded the other administrative law judge's decision without vacating, which procedurally leaves two administrative law judge decisions either in conflict or as a redundancy, this is the directive of the agency. Thus, because the fact-finder allowed benefits and the initial administrative law judge decision allowed benefits, claimant shall not be required to repay benefits already received at the time of this hearing and benefit allowance reversal, and employer's account shall not be charged.

**DECISION:**

The March 17, 2011 (reference 01) decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Pursuant to agency directive, the claimant is not overpaid benefits due to two decisions allowing benefits by the fact-finder and the initial administrative law judge and employer shall not be liable for any related benefit charges.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs