

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI L WILSON
Claimant

APPEAL NO. 07A-UI-05577-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

**OC: 04/29/07 R: 04
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

R. J. Personnel (employer) appealed a representative's May 22, 2007 decision (reference 01) that concluded Terri Wilson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2007. The claimant participated personally. The employer participated by Mike Thomas, Account Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 hired on February 3, 2005, as a full-time temporary clerk assigned to work at Monsanto. The claimant's position would have been eliminated on May 11, 2007. The claimant stopped working on April 30, 2007, due to the upcoming layoff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

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(29) provides:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

871 IAC 24.26(13) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

By the time claimant had quit, employer had already made the decision to lay off claimant due to a lack of work. Since the layoff was scheduled to begin on or about May 11, 2007, claimant would be entitled to benefits from that date forward. Because she left in advance of the announced layoff, benefits are denied through the week ending May 12, 2007.

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 benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's May 22, 2007 decision (reference 01) is modified in favor of the appellant. The claimant voluntarily left the employment in advance of a scheduled layoff. Benefits are allowed effective May 13, 2007, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$414.00

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw