

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE O HERRIMAN
Claimant

APPEAL NO. 08A-UI-03586-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAMONT LTD
Employer

OC: 03/09/08 R: 04
Claimant: Respondent (2)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Lamont, Ltd., filed an appeal from a decision dated April 1, 2008, reference 01. The decision allowed benefits to the claimant, Michele Herriman. After due notice was issued, a hearing was held by telephone conference call on April 29, 2008. The claimant participated on her own behalf. The employer participated by Human Resources Manager Jim Belger.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Michele Herriman was employed by Lamont, Ltd., from November 19, 2007 until January 18, 2008, as a full-time clerical worker. On January 17, 2008, the claimant's supervisor, Ginger, took her to lunch, as she did with other clerical staff on a rotating basis. The purpose was to "touch base" and discuss any concerns her subordinate might have.

At that lunch, the claimant expressed her concerns that she was not doing the job she was hired to do, was not learning her assigned job duties because of lack of training, and that necessary software had not been installed on her computer after two months. After they returned to the office, the claimant felt Ginger had shared, via instant messaging, some of her comments with two other clerical workers, Jennifer Jern and Jennifer Mellinger. Ms. Herriman only heard the three of them typing on their computers but never read any of the copy to know the actual content.

The next day a third employee, Amber Myer, told the claimant there had been a meeting between Ginger, Ms. Jern and Ms. Mellinger after Ms. Herriman left the day before to discuss the claimant's future employment. After learning this, Ms. Herriman met with Human Resources Manager Jim Bolger and said she did not think she would be returning to work. That is the first time she had shared her concerns with him and she did not seek any resolution so much as to express her reasons for resigning. These were the same concerns she expressed to her

supervisor the day before, that she did not feel she was doing the job she had been hired to do and did not feel she was doing it very well due to lack of training.

Mr. Belger asked her to reconsider and she said she would let him know on Monday. When he said he would not be in the office on Monday, she returned to work. Ginger asked her what she had discussed with Mr. Belger and wanted to know why she had not talked to her directly as her supervisor. The claimant asked whether they could discuss this privately over the weekend and Ginger agreed, providing Ms. Herriman with her cell phone. However, before the end of the day, the claimant decided to resign and did not return to work after January 18, 2008.

Mr. Belger interviewed the supervisor, and the three other workers, and did not discover anything to corroborate the claimant's concerns except for Ginger telling Ms. Jern and Ms. Mellinger to "let go" of some of their work to assist the claimant in learning more about the office duties. Ms. Myer maintained there had been a discussion with everyone in the department about training and job duties, but provided no information to support what the claimant had alleged.

Michele Herriman has received unemployment benefits since filing a claim with an effective date of March 9, 2008.

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(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

871 IAC 24.25(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

871 IAC 24.25(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 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:

(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.

The claimant quit for various reasons, but the major circumstance appears to be a conflict with her supervisor. She did not approve of the way Ginger was overseeing her subordinates and what she perceived as the supervisor discussing subjects they had discussed at their lunch with other workers. The purpose of the lunch was for Ms. Herriman to give feedback to her supervisor and this she did, indicating concern that others were not training her adequately. It would not be unreasonable for the supervisor to discuss these concerns with the employees in question.

Ms. Herriman elected to quit rather than give the human resources manager the opportunity to intervene and work with the office personnel to iron out the differences and learn to overcome the problems. The record establishes 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 April 1, 2008, reference 01, is reversed. Michele Herriman 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 \$2,422.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw