

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J ELMORE
Claimant

APPEAL NO. 08A-UI-04642-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VICTOR PLASTICS INC
Employer

OC: 04/06/08 R: 03
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Victor Plastics, Inc. filed an appeal from a representative's decision dated May 7, 2008, reference 01, which held that no disqualification would be imposed regarding Amanda Elmore's separation from employment. After due notice was issued, a hearing was held by telephone on May 30, 2008. Ms. Elmore participated personally. The employer participated by Tiffany Tremmel, Human Resources Manager.

ISSUE:

At issue in this matter is whether Ms. Elmore was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Elmore began working for Victor Plastics, Inc. on November 13, 2006 and was last employed full time as a machine operator and utility person. In January of 2008, employees were notified that the company had filed for bankruptcy and might close as of May 1, 2008 if a buyer could not be found for the business. Medical insurance for employees was discontinued as of February 1, 2008, as was the accrual of vacation time. In late March or early April, employees were notified that the business was being sold to River Bend Industries.

It was anticipated that the sale would be effective as of midnight on April 13. Employees were notified that they would be terminated from the Victor Plastics, Inc. payroll and transferred to the payroll of River Bend Industries as of April 14. Employees were to remain on the same shift performing the same job unless notified to the contrary. There were to be interviews conducted and there was no guarantee that all employees would continue to have jobs after the interview process. There was to be a 90-day probationary period for all employees after April 13. Ms. Elmore was never told that a job would not be available for her after April 13.

The health insurance benefit that had been discontinued in February of 2008 was to be reinstated effective May 1, 2008 with no waiting period for coverage. Any vacation time accrued, up to three weeks, was to be honored by River Bend Industries. Ms. Elmore had not been notified of any change to be made in her pay or work hours. She notified her supervisor that she would not work under the new owners. Her decision was based, in part, on the fact that benefits had been discontinued by Victor Plastics, Inc. in February. Ms. Elmore also objected to the fact that she would have to serve an additional probationary period.

Ms. Elmore filed a claim for job insurance benefits effective April 6, 2008. She has received a total of \$1,360.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. Elmore initiated her separation from employment when she declined to continue working under new ownership. It is true that she was to be terminated from the payroll of Victor Plastics, Inc. However, the administrative law judge views this as only a "paper" termination and not indicative of an intention to sever the employment relationship. It is clear that the new owner intended to continue Ms. Elmore's employment, at least as of April 14, 2008. It is true that there was no guarantee that all employees who had worked for the prior owners would be retained. However, Ms. Elmore preempted any decision regarding her continued employment when she elected not to work for the new owners. Therefore, she does not know if or when she might have lost employment. For the above reasons, the administrative law judge concludes that Ms. Elmore quit available employment on April 11, 2008.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Elmore decided not to work for the new owner because of actions taken by the predecessor regarding fringe benefits. She had lost certain benefits on February 1, 2008 but remained in the employment until mid-April in spite of the loss. By remaining in the employment, she acquiesced to the old owner's actions in discontinuing benefits. The benefits were going to be restored by the new owners as of May 1. Inasmuch as she had acquiesced to the prior loss of benefits and the benefits were going to be restored by the new owners, the loss of benefits did not constitute good cause for quitting.

There was no confirmation that Ms. Elmore would have suffered any loss in the number of hours she worked each week. According to the written material, her shift was to remain the same. The administrative law judge presumes, therefore, that she would have continued working the same number of hours as her prior shift. It is true that Ms. Elmore would have had to serve an additional 90-day probationary period. This was not so onerous a requirement as to constitute good cause for quitting. She may well have to serve a probationary period when she finds new employment at this point.

Ms. Elmore did not work for the new owners to learn what changes, if any, might be forthcoming. The evidence of record failed to identify any substantial change in the terms or conditions of employment between the former owner and the new owner. As such, she did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied. Ms. Elmore has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 7, 2008, reference 01, is hereby reversed. Ms. Elmore quit her employment for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Elmore has been overpaid \$1,360.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs