

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN L JOHNSON
Claimant

APPEAL NO. 07A-UI-05859-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

**OC: 04/29/07 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 30, 2007, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 27, 2007. Although notified, the claimant did not participate. The employer participated by Karen Brewin, Representative, and witness Teresa Forsyth. Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the records, finds: The claimant worked for this employer from June 20, 2006, until March 19, 2007, when the claimant quit his job due to job abandonment. Ms. Johnson was employed on a full-time basis as a sales person. Her immediate supervisor was Teresa Forsyth. Mr. Johnson discontinued reporting for scheduled after March 14, 2007. Under company policy, employees are considered to have voluntarily quit their job if they fail to report or notify the employer for two consecutive days. When the claimant did not report or notify the employer for three or more consecutive days and did not return to employment the employer reasonably determined that the claimant had chosen to voluntarily quit his employment for reasons that were unknown.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without 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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees will report for work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays, in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,686.00.

DECISION:

The decision of the representative dated May 30, 2007, reference 02, is hereby reversed. The claimant quit work for reasons not attributable to the employer. Benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,686.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw