

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPHINE S GOETZ

Claimant

APPEAL NO. 08A-UI-10434-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUCKWALL-ALCO STORES INC

Employer

**OC: 08/24/08 R: 01
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Duckwall-Alco Stores, Inc. filed a timely appeal from an unemployment insurance decision dated October 27, 2008, reference 01, that allowed benefits to Josephine S. Goetz. After due notice was issued, a telephone hearing was held November 25, 2008 with Ms. Goetz participating. Store Manager Cindy Aighmy testified for the employer which was represented by Pat McNicol of TALX UC eXpress. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Josephine S. Goetz was hired by Duckwall-Alco Stores, Inc. on December 3, 2003. She last worked on July 19, 2008. She was a full-time group manager. Ms. Goetz had spoken to Store Manager Cindy Aighmy about the possibility of taking time off for some personal business and financial matters. Ms. Aighmy approved this request with the provision that Ms. Goetz must contact the company within 29 days after July 19, 2008. Twenty-nine days after July 19, 2008 was August 17, 2008. Ms. Goetz did not contact the employer before August 18, 2008.

Ms. Goetz has received unemployment insurance benefits since filing a claim during the week of August 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question here is whether the claimant's separation from employment was a disqualifying event. The administrative law judge concludes that the claimant voluntarily left work by failing to return from a leave of absence within the time limit specified.

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.

The evidence in this record persuades the administrative law judge that Ms. Goetz requested an informal leave of absence. The evidence also persuades the administrative law judge that Ms. Aighmy granted the leave of absence for a limited period of time, not more than 29 days after Ms. Goetz last worked. Ms. Aighmy testified that Ms. Goetz contacted the company 33 days after she last worked. Ms. Goetz testified that she contacted the employer on August 18, 2008, the 30th day after she last worked.

An individual on a negotiated leave of absence with the consent of both parties is considered to be unavailable for work during the period of the leave of absence. See 871 IAC 24.22(2)j. If the individual fails to return at the end of the leave of absence and thus becomes unemployed, the law considers that the individual has voluntarily left employment and is ineligible for benefits. See 871 IAC 24.22(2)j(2). The administrative law judge concludes from the evidence and from the section of the Iowa Administrative Code cited above that Ms. Goetz effectively resigned her position by failing to contact the employer within 29 days after she last worked. Benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the unemployment insurance benefits she has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated October 27, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of whether the claimant must repay benefits she has received is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs