

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LISA R NEWTON
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LISA R NEWTON
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AMENDED

Appeal Number: 06A-UI-03147-JTT
OC: 01/22/06 R: 03
Claimant: Respondent (2R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Remedy Intelligent Staffing filed a timely appeal from the March 1, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 6, 2006. Claimant Lisa Newton participated. Staffing Consultant Sadie Henry represented the employer. The administrative law judge took official notice of the Agency's administrative records.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Newton commenced her employment through Remedy Intelligent Staffing on May 12, 2005.

Ms. Newton commenced her final assignment on June 14, 2005. Ms. Newton was assigned to work in the fruit department at a food production plant. For a brief period in August, Ms. Newton was assigned to work in the dessert department of the same plant, had an allergic reaction, and was thereafter never again assigned to work in the dessert department.

In the fall of 2005, Ms. Newton requested a reduction in hours and the employer accommodated the request. In December 2005, Ms. Newton requested an increase in hours, but the employer was unable to accommodate the request. Ms. Newton continued to work the same number of hours until the end of her employment. During the week that ended February 19, 2006, Ms. Newton advised the temporary employment agency that she was leaving the employment. Ms. Newton cited the fact that she could not get increased hours at the assignment, her belief that she could not find other employment in Iowa, and her intention to return to Alabama. The employer continued to have the same work available to Ms. Newton.

Ms. Newton established a claim for unemployment insurance benefits that was effective January 22, 2006 and has received benefits. Iowa Workforce Development records indicate that the Agency has disbursed to Ms. Newton benefits totaling \$499.00. On February 13, the Agency issued a warrant or warrants for benefits totaling \$115.00. On March 30, the Agency issued a warrant or warrants for benefits totaling \$384.00. The Agency mailed the March 30 disbursement to Ms. Newton's new address of record in Alabama and the disbursement may still be enroute to Ms. Newton. The \$384.00 was for weeks following Ms. Newton's resignation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Newton voluntary quit was for good cause attributable to the employer. It does not.

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(21) 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:

- (21) The claimant left because of dissatisfaction with the work environment.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

The evidence in the record establishes that Ms. Newton quit the employment to relocate to Alabama and because the employer would not increase her hours of employment after the employer had complied with Ms. Newton's request for decreased hours. Neither reason for quitting constituted good cause attributable to the employer. The weight of the evidence, including Ms. Newton's desire for increased hours at the assignment, does not support a conclusion that Ms. Newton's quit had anything to do with an allergic reaction she had experienced during a brief change in duties in the middle of 2005.

Ms. Newton voluntarily quit the employment without good cause attributable to the employer. Accordingly, the quit was a disqualifying event. The employer's account will not be charged. Ms. Newton is disqualified for benefits based on wage credits earned from base period employment with this employer until she had worked in and been paid wages equal to ten times her weekly benefit amount.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27. This matter will be remanded for redetermination of Ms. Newton's eligibility for reduced benefits.

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 \$384.00 in benefits that the Agency has disbursed to Ms. Newton constitutes an overpayment Ms. Newton must repay to the Agency. Ms. Newton will have to repay that amount. The overpayment amount may be reduced if, upon remand, Ms. Newton is deemed eligible for reduced benefits. Ms. Newton may reduce the overpayment amount by returning the disbursement warrant that is currently enroute to her.

DECISION:

The Agency representative's decision dated March 1, 2006, reference 01, is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$384.00.

REMAND:

This matter is remanded to a claimant representative for redetermination of Ms. Newton's eligibility for reduced benefits.

jt/pjs/pjs