

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTWONETTE K SHADE
Claimant

APPEAL NO. 07A-UI-09360-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARBOR SPRINGS
Employer

**OC: 09-09-07 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 1, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 29, 2007 in Des Moines, Iowa. Claimant did participate. Employer did participate through Jessica Beving, Human Resources Manager and (representative) Heath Bartness, Administrator. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged for job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a dietary services supervisor full time beginning January 9, 2006 through September 6, 2007 when she voluntarily quit.

The claimant was on vacation through September 4, 2007. She was to return to work on September 5 at her normal work time of 8:00 a.m. On September 5 the claimant did not show up for work at her normal time and did not call the employer until approximately 1:00 p.m. When she did call at 1:00 p.m. she spoke to her assistant, Curtis, instead of speaking to Mr. Bartness or to Ms. Beving. The claimant arrived at the work site at approximately 4:00 p.m. as she had been delayed when she missed her flight in Chicago.

When she arrived at the workplace she met with both Ms. Beving and Mr. Bartness who was planning on disciplining the claimant for being a no call-no show for work that day. The claimant had a history of being tardy to work. During the meeting the conversation between Mr. Bartness and the claimant became heated. The claimant walked out of the meeting. During the meeting Mr. Bartness asked the claimant to resign, which she did not do. Mr. Bartness indicated that he

did not intend to accept the claimant's resignation but wanted to impress upon her the serious nature of her no call-no show incident.

The claimant walked out of the September 5 meeting before it was completed. Mr. Bartness intended to resume the meeting when the claimant showed up for work again the next morning at 8:00 a.m. on September 6. On September 5 Mr. Bartness asked the claimant if she was going to show up for work the next morning. The claimant asked Mr. Bartness if she was fired and he told her no, to show up for work on September 6. The claimant did not show up for work on September 6, but instead called Mr. Bartness and told him over the phone that she assumed he knew she was resigning since she did not show up for work at 8:00 a.m.

The claimant admits that she was never told she was discharged by anyone. The claimant reported to the facility on September 7 to pick up her last paycheck and indicated to another employee that she had e-mailed her resignation notice to Mr. Bartness.

The claimant indicates that she was going to give notice when she called in on September 6, which clearly indicates that she did not believe she was discharged on September 5 as an employee who thought they were discharged would not call in to give notice. When the claimant called Mr. Bartness she was already late to work and did not indicate to him that she was giving any notice. If an employee intends to give notice, they must evidence some intent to continue working; the claimant's failure to appear for her work shift on September 6 convinces the administrative law judge that the claimant did not intend to give any notice.

Claimant has received unemployment benefits since filing a claim with an effective date of September 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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(28) 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 § 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 § 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:

- (28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The claimant was late to work on September 5 and was in a meeting to be disciplined for her absence. She left the meeting knowing that she could return to work the following morning. Mr. Bartness specifically told the claimant on the evening of September 5 that she was not discharged but could return to work on September 6. The claimant did not return to work on September 6 but instead called Mr. Bartness around 9:30 a.m. to indicate that she was resigning. The administrative law judge is not persuaded that the claimant intended to give a 30-day notice, as that would have required her to keep working for 30 additional days and she did not show up for work on September 6. If an employee intends to give notice, they must evidence some intent to continue working; the claimant's failure to appear for her work shift on September 6 convinces the administrative law judge that the claimant did not intend to give any notice. The claimant quit because she had been reprimanded for missing work on September 5. Quitting because of a reprimand is not good cause attributable to the employer. Benefits are denied.

Iowa Code § 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 claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 1, 2007, reference 01, decision is reversed. Claimant voluntarily left her employment without 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 benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$2082.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs