

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA FRYE

Claimant

APPEAL NO: 10A-UI-08622-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YELLOW BOOK USA INC

Employer

OC: 05/16/10

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Yellow Book USA, Inc. (employer) appealed an unemployment insurance decision dated June 11, 2010, reference 01, which held that Samantha Frye (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2010. The claimant participated in the hearing. The employer participated through Christy Dalecky, Human Resources Manager; Mike Longwell, Senior Manager of Listing; and Public Information Associate Managers Keely Zieser and Amy Sturms. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time public information coordinator from July 3, 2006 through May 21, 2010 when she voluntarily resigned. The employer issued her a first written warning on May 21, 2010 for using her company email to send non-work-related and unprofessional emails. The claimant signed the warning and at the same time told the employer, Senior Manager of Listing Mike Longwell and Public Information Associate Manager Amy Sturms, she was quitting anyway and her last day was going to be May 27, 2010. The claimant cuts hair and she said something about renting a chair.

The employer told the claimant she did not need to return to work but would be paid through May 27, 2010. Her record indicates she had satisfactory attendance and had a good overall performance. The claimant was not in jeopardy of being discharged even though she claims that is what happened.

The claimant filed a claim for unemployment insurance benefits effective May 16, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by telling two members of management on May 21, 2010 that she was quitting her employment. Her contention that she was fired is not supported by the facts. The employer had no reason to discharge her and paid her through the effective date of her resignation. That would not have happened if she had been discharged. The law presumes it is a quit without good cause attributable to the employer when an employee leaves after being reprimanded. 871 IAC 24.25(28).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated June 11, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css