

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELLEN L KIMBALL**  
Claimant

**APPEAL NO. 11A-UI-04151-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CDS GLOBAL INC**  
Employer

**OC: 11/07/10  
Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 22, 2011, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 26, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing but offered a statement in lieu of testimony. Sharon Kroger participated in the hearing on behalf of the employer with witnesses, Kris Pope and Maryann Schwery. Exhibits A (claimant's statement) and One through Four were admitted into evidence.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a hard copy customer service representative from January 31 to February 17, 2011.

On February 17, 2011, the claimant informed her supervisor and the workforce manager that she could not do her job, it was affecting her sleeping and eating, and she felt she was already three weeks behind. The employer understood she was resigning and intended to have her sign a resignation as part of the exit interview process. The claimant stood up and said she was going to get her coat. She got her coat, turned in her name badge, stated that she was not signing anything, and left the building.

The claimant was in no danger of losing her job as she was in the early part of the training program. Continued work was available. She left employment because she did not think she could grasp the job.

The claimant filed for and received unemployment insurance benefits for the weeks between February 20 and April 2, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The evidence establishes the claimant quit her job.

The unemployment rules stated that a claimant who quits because she felt her the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available, has quit without good cause attributable to the employer. 871 IAC 24.25(33).

Based on the statute and the rule, the claimant quit employment without good cause attributable to the employer. She was in the early stage of her training, but decided she could not do the job. Continuing work was available when she quit.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated March 22, 2011, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css