

**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**

**TAMARA CONDER
1212 RIPLEY CT
MUSCATINE IA 52761**

**SYSTEMS UNLIMITED INC
1556 – 1ST AVE S
IOWA CITY IA 52240**

**Appeal Number: 04A-UI-01423-ET
OC 01-11-04 R 04
Claimant: Respondent (2)**

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, 2nd 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 Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a decision dated February 6, 2004, reference 01, that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 2, 2004. The claimant participated in the hearing. Mona Dowat, Human Resources; Terry Koenig, Coordinator; and Regina, Coordinator, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony and examined the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time senior counselor for Systems Unlimited from August 7, 2002 to January 9, 2004. On January 7, 2004, Supervisor Tracy Koenig met with the claimant and gave her a list of expectations she developed following questionnaire results from the staff that expressed concerns about the claimant's availability and communication. Ms. Koenig specifically told the claimant the list of expectations was not a disciplinary action but the claimant became very upset during the meeting, grabbed the list, signed it, and said she was not going to discuss it with Ms. Koenig any further. The claimant went to the house she supervises. She had been crying and told the staff what happened. She then placed the list of expectations in the communication log book and told the staff that further concerns should be brought to her directly. The employer learned of her actions and felt it was inappropriate to put the list of expectations in the communication log for everyone to see and to discuss the situation with the staff. On January 9, 2003, the employer met with the claimant and presented her with an "agreement for continued employment," which stated the claimant must follow her supervisor's instructions in "specifics and intent:" refrain from showing disrespect to her supervisor; refrain from making statements critical of supervisors, the employer's policies and the scheduling; and interact with supervisors and staff in a positive manner. The employer explained the agreement would remain in effect for one year and failure to meet the terms would result in termination. The employer also told the claimant that if she did not sign the document it would be considered job abandonment. The claimant said she did not concur with the agreement and wanted to discuss the situation with her attorney. The employer told her that she could sign it but write that she disagreed and wanted to appeal. The employer also stated its appeal process was not merely a "rubber-stamp" of the supervisor's action. The claimant refused to sign the document and again told the employer she wanted to consult with her attorney. The employer provided the claimant with a copy of the appeal process, told her she could think about it until Monday January 12, 2004, and gave her Ms. Koenig's cell phone number. The claimant again stated she wanted to talk to her attorney and gave the employer her keys. She did not contact the employer after the meeting and the employer considered her to have voluntarily quit her job.

The claimant has received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. 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.

871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). While the claimant may have disagreed with the "agreement for continued employment," it does not appear unreasonable and the employer provided her the opportunity to sign the document and write that she did not agree and then take advantage of the appeal process; but rather than doing so, the claimant chose to quit her job. The employer was not terminating the claimant's employment and there were avenues available to her to address the situation short of quitting her job. Consequently, the administrative law judge concludes the claimant initiated the separation and has not established that her leaving was for good cause attributable to the employer. Benefits are denied.

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.

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

DECISION:

The February 6, 2004, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$1,420.00.

je/b