

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE B HENNINGER
Claimant

APPEAL NO. 10A-UI-06764-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO
Employer

OC: 03/28/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Kum & Go filed an appeal from a representative's decision dated April 26, 2010, reference 01, which held the no disqualification would be imposed regarding Shane Henninger's separation from employment. After due notice was issued, a hearing was held by telephone on June 18, 2010. The employer participated by Bob O'Hara, Store Clerk, and Doug Meier, General Manager. Mr. Henninger opted not to participate.

ISSUE:

At issue in this matter is whether Mr. Henninger was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Henninger began working for Kum & Go on July 23, 2008. He worked full time as a store clerk. On March 22, 2010, the employer's cappuccino machine tripped an electrical breaker. Another associate, Bob O'Hara, flipped the breaker and turned the machine back on. He then got an extension cord and ran it behind other equipment to plug the cappuccino machine into a different outlet. Because of this, Mr. Henninger notified his general manager that he was quitting because of unsafe working conditions. He said he felt plugging the machine into a different outlet represented a fire hazard. He told the general manager twice that he was quitting before he left the store. Continued work would have been available if he had not quit.

Mr. Henninger filed a claim for job insurance benefits effective March 28, 2010. He has received a total of \$3,315.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The evidence of record satisfies the administrative law judge that Mr. Henninger was not discharged but quit his employment voluntarily. An individual who leaves employment

voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Henninger told the employer he was quitting because of unsafe working conditions. He did not participate in the hearing to identify what he felt were unsafe conditions at the workplace. The administrative law judge cannot conclude that plugging the cappuccino machine into an extension cord in a different outlet represented a fire hazard. Mr. Henninger did not participate to explain why he felt the situation was hazardous. The evidence failed to establish that the separation was for good cause attributable to the employer and, as such, benefits are denied.

Mr. Henninger has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated April 26, 2010, reference 01, is hereby reversed. Mr. Henninger voluntarily quit his employment without good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Henninger will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs