

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN R GALBREATH
Claimant

APPEAL NO. 13A-UI-06521-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

YELLOWBOOK INC
Employer

OC: 05/05/13
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 24, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 26, 2013. The claimant did participate. The employer did participate through Christi Dalecky, Senior Employee Relations and Legal Response Manager, Shanthi Nicola, Director of Book Production and Order Processing and James Bingham, Sales Liaison. Employer's Exhibit One was entered and received into the record.

ISSUES:

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

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: The claimant was employed as a sales liaison coordinator full time beginning August 25, 2008 through March 8, 2013 when she voluntarily quit.

The claimant alleges that she quit for two main reasons, one she wanted to work someplace closer to home as she had been driving at least 30 minutes one way for the last five years. The employer's place of business had not moved at all during the claimant's employment.

The claimant also quit because she thought she was being forced to work in an intolerable work environment. The claimant alleged that her direct supervisor, Mr. Bingham, treated another coworker, Patricia Watts, differently than he treated her. The claimant complained to Mr. Bingham, her direct supervisor, to Ms. Nicola, Mr. Bingham's direct supervisor and to Ms. Dalecky. All three investigated the claimant's complaints. None of them found any evidence that indicated Ms. Watts was being given preferential treatment over the claimant. There is no doubt that a strong personality conflict existed between Ms. Watts and the claimant.

The two simply did not like each other. Ms. Watts complained about how the claimant treated her in addition to the claimant complaining about how Ms. Watts treated her. An inability to get along with a coworker does not require that an employer accommodate personal dislikes and likes. The evidence does not establish that the claimant was treated any differently than Ms. Watts. Nor does the evidence establish that Ms. Watts or Mr. Bingham or anyone for that matter created a work environment so hostile or intolerable that the claimant had no choice but to quit. No physician advised the claimant to quit, nor is there any medical evidence that the claimant's work caused any physical or mental problems.

Claimant has received unemployment benefits since filing a claim with an effective date of May 5, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the 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(6), (22) 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:

(6) The claimant left as a result of an inability to work with other employees.

(22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

A mere allegation of an intolerable or hostile work environment does not establish good cause for a claimant leaving the employment. The claimant simply did not get along with one of her coworkers. She complained to management who investigated. The managers simply did not find her complaints credible or requiring action. Under these circumstances the administrative law judge concludes that the claimant quit without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law 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. However, the overpayment may not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. If so, 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 not eligible for those benefits.

DECISION:

The May 24, 2013 (reference 01) decision is reversed. Claimant voluntarily left the 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.

REMAND:

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs