

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERRIANNE R BROWN
Claimant

APPEAL NO. 13A-UI-08473-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 08/05/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 12, 2013, reference 02, decision that allowed benefits. After due notice was issued, an in-person hearing was held on September 17, 2013. Claimant Merrienne Brown participated. Lanette Butt represented the employer and presented additional testimony through Melissa Shinn and John Judge. Exhibits One through 22 were received into evidence.

The parties stipulated that the employer participated in the fact-finding interview.

ISSUE:

Whether Ms. Brown's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Merrienne Brown was employed by Git-N-Go as a full-time, salaried store manager from September 2012 until June 13, 2013, when she voluntarily quit in anticipation of being reprimanded for theft. On June 13, 2013, the employer summoned Ms. Brown to a meeting at the employer's office on Indianola Avenue in Des Moines. The purpose of the meeting was to review with Ms. Brown the surveillance and transaction records the employer had reviewed as part of its investigation into financial irregularities at the store Ms. Brown managed. The employer had through its investigation uncovered many instances in which Ms. Brown had manipulated cash register transactions after a customer had paid for merchandise to delete items the customer had paid for. The employer had through its investigation uncovered instances in which Ms. Brown had manipulated cash register transactions in order to acquire or give away merchandise. For example, Ms. Brown manipulated a transaction so that her boyfriend could take antifreeze from the employer's store and put in the radiator of Ms. Brown's car without paying the employer for the antifreeze.

Ms. Brown knew during the course of the employment that the employer was investigating financial irregularities at her store.

Ms. Brown's scheduled quit time on June 13, 2013 was 3:00 p.m. Ms. Brown arrived for the meeting at the employer's office at about 1:00 p.m. Ms. Brown was to meet with supervisors Lanette Butt and John Judge. The supervisors left Ms. Brown waiting a few minutes in the front room of the office while they prepared for their meeting. Ms. Brown elected to quit the employment, rather than meet with the supervisors. The employer asked for a written resignation to memorialize Ms. Brown's decision to leave the employment and Ms. Brown provided a short resignation memo. Ms. Brown left the employer's office well before her scheduled quit time.

Ms. Brown established an additional claim for benefits that was effective June 24, 2013 and received benefits in connection with both the additional claim and as part of a new original claim that was effective August 4, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(28) 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 section 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 section 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:

(28) The claimant left after being reprimanded.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Over the course of more than an hour of in-person testimony, Ms. Brown rather brazenly attempted to mislead the administrative law judge into believing that her decision to leave the employment was based on difficulty in getting paid for some of her work hours. The weight of the evidence indicates that any misunderstanding concerning compensation for the salaried management position played little to no role in Ms. Brown's decision to leave the employment. The weight of the evidence establishes instead that Ms. Brown elected to leave the employment either out of a guilty conscience in the context of a pattern of theft from the employment and/or out of a desire to avoid meeting with Ms. Butt and Mr. Judge to discuss the findings of the employer's investigation into financial irregularities at Ms. Brown's store.

Ms. Brown voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Brown is disqualified for benefits until 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 employer's account shall not be charged for benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)(a) and (b).

Ms. Brown received benefits, but has been disqualified for benefits as a result of this decision. The benefits Ms. Brown received constitute an overpayment of benefits. Because the administrative law judge did not take testimony on the amount of benefits received by Ms. Brown since the separation, this matter will be remanded to the Claims Division for determination of the amount of the overpayment and entry of an overpayment decision. That decision should factor the parties' stipulation that the employer participated in the fact-finding interview and the administrative law judge's conclusion that the claimant attempted to mislead the administrative law judge about the basis for her voluntary quit.

DECISION:

The agency representative's July 12, 2013, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the overpayment amount and entry of an overpayment decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs