

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELODY S DAWDY**  
Claimant

**APPEAL NO. 08O-UI-07451-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ZALES**  
Employer

**OC: 05/25/08 R: 01**  
**Claimant: Respondent (2)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

This matter was before the administrative law judge based on an Employment Appeal Board remand in Hearing Number 08B-UI-06103. The matter was remanded because the digital record of the July 17, 2008 appeal hearing could not be located. The appeal hearing in Appeal Number 08A-UI-06103-S2T was based on the employer's timely appeal from the June 19, 2008, reference 01, decision that allowed benefits. After due notice was issued, a new appeal hearing was held on September 2, 2008. Claimant Melody Dawdy participated personally and was represented by Lee Sturgeon of Sturgeon Paralegal Service. Sue Bufis, Regional Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A through E into evidence.

**ISSUE:**

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

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

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Melody Dawdy was employed as the full-time manager of the Sioux City Piercing Pagoda from October 2005 until April 18, 2008. Piercing Pagoda's parent company is Zales. On February 20, 2008, Sue Bufis became the District Manager for the Sioux City Piercing Pagoda store. Ms. Bufis inherited the store from another District Manager the employer had recently discharged from the employment. Ms. Bufis inherited a store in Sioux Falls at the same time. Ms. Bufis quickly discerned the two stores were not being operated in compliance with the employer's established guidelines. With regard to the Sioux City store, Ms. Bufis discerned that the labor cost was excessive in relation to the sales generated by the store. Ms. Bufis discerned that Ms. Dawdy was consistently working overtime hours and was not staffing the store according to the employer's established guidelines. Ms. Bufis discerned that the store was underperforming and was not meeting the profitability threshold the employer required to keep a store in operation. Ms. Bufis discerned greater

irregularities in the Sioux Falls store that required a significant amount of her time and attention in March and April.

Once Ms. Bufis took over the Regional Manager duties for the two stores, she included these stores in her daily and weekly conference call with the other dozen or so stores that she supervised. The purpose of the phone calls was to make certain all stores had opened for the day and to review sales figures. Ms. Dawdy and the two other employees at the Sioux City store perceived these daily phone calls as harassing behavior. On April 4, employee Elizabeth Tinoco resigned without notice. On April 11, employee Andrea Venteicher resigned.

Ms. Bufis first set foot in the Sioux City store on April 6, 2008. Ms. Bufis knew at the time she arrived that her presence would be a sensitive issue. Because Ms. Tinoco had just quit, Ms. Bufis was chiefly concerned with getting the store fully staffed to bring down the overtime pay expense and to otherwise bring the store back into compliance with the employer's established staffing protocol. Ms. Dawdy provided Ms. Bufis with multiple excuses for having operated the store without the proper staffing for at least a period of several months. Ms. Dawdy provided Ms. Bufis with a list of other stores in the mall that the employer would want to avoid when recruiting new staff. This blacklist appeared to be based on interpersonal conflict between Ms. Dawdy and the staff at those stores. Ms. Bufis discerned that Ms. Dawdy had not been using an applicant screening form that the employer required. On Ms. Bufis's first day in the store, Ms. Bufis attempted to recruit two women who had stopped by to look at the store's merchandise. Ms. Dawdy intervened while Ms. Bufis stepped away to get the screening form and said something to discourage the women from applying. Ms. Dawdy otherwise interfered with Ms. Bufis' attempts to bring in new staff.

Ms. Dawdy notified Ms. Bufis on April 14 that Ms. Venteicher had quit. At the same time, Ms. Dawdy told Ms. Bufis that she had medical restrictions that limited her ability to work extended periods and indicated that she could no longer work extended hours. Ms. Dawdy requested that Ms. Bufis bring in employees from other stores to work at the Sioux City store. There were no stores within several hours' distance that had staff that could be shared with the Sioux City store. Ms. Bufis notified Ms. Dawdy that she would have to cover shifts as needed. This was consistent with how Ms. Dawdy had previously operated the store. Ms. Bufis indicated that she would start working at the store to help cover shifts until the store was again fully staffed. Ms. Bufis also counseled Ms. Dawdy for failing to properly recruit and maintain staff. A short while later, Ms. Dawdy contacted Ms. Bufis and told Ms. Bufis that she was giving her two weeks' notice of her quit. Both parties understood that April 28 would be Ms. Dawdy's last day. Ms. Bufis recruited and hired new staff. Ms. Dawdy last worked on April 16. When Ms. Dawdy appeared for work on April 18, Ms. Bufis intercepted her before she could enter the store and requested her keys. Ms. Bufis told Ms. Dawdy that she did not need her to report for work, but that the employer would pay her for the two-week notice period.

Ms. Dawdy established a claim for unemployment insurance benefits that was effective May 25, 2008 and received benefits totaling \$2,520.00 for the period of May 25, 2008 through July 12, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first question is whether Ms. Dawdy voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The greater weight of the evidence in the record establishes that Ms. Dawdy voluntarily quit the employment and was not discharged. The weight of the evidence indicates that Ms. Bufis' efforts were motivated by a desire to bring the Sioux City store back into compliance with the employer's established protocols, which included making certain that the store was fully and properly staffed. The evidence indicates that Ms. Dawdy had her own ideas of how the store should be run and that these conflicted with the employer's established protocol. The evidence indicates that a personality conflict quickly evolved and that Ms. Dawdy felt threatened by Ms. Bufis' attempts to reform store operations. The evidence fails to establish that Ms. Bufis had an agenda to force Ms. Dawdy to separate from the employment. The evidence indicates instead that Ms. Dawdy elected to quit, rather than submit to, and cooperate with, Ms. Bufis' authority as Regional Manager. The evidence indicates that the last straw for Ms. Dawdy was when Ms. Bufis issued a mild reprimand for Ms. Dawdy's failure to properly recruit and staff the Sioux City store.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Where a person voluntarily quits employment due to a personality conflict with a supervisor or in response to a reprimand, the person is presumed to have quit without good cause attributable to the employer. See 871 IAC 24.25(22) and (28).

The weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment. The evidence establishes instead that Ms. Dawdy was used to operating the store in a fashion that suited her purposes, but that her operation of the store was not in compliance with the employer's established protocol. The evidence indicates that Ms. Dawdy's quit was in response to the personality conflict with Ms. Bufis and to the mild reprimand Ms. Bufis issued shortly before Ms. Dawdy announced her quit.

Workforce Development rule 871 IAC 24.26(12) provides as follows:

When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

The evidence indicates that the employer discharged Ms. Dawdy in response to her notice of intent to resign, but that Ms. Dawdy did not establish a claim for unemployment insurance benefits until more than a month later. Because Ms. Dawdy did not have an active claim during the notice period, she would not be eligible for benefits during the notice period.

Ms. Dawdy voluntarily quit the employment without good cause attributable to the employer, effective April 28, 2008. Accordingly, Ms. Dawdy 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 paid to Ms. Dawdy.

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 Ms. Dawdy has been deemed ineligible for the unemployment insurance benefits she received, those benefits constitute an overpayment that Ms. Dawdy must repay to Iowa Workforce Development. Ms. Dawdy is overpaid \$2,520.00.

**DECISION:**

The Agency representative's June 19, 2008, reference 01, 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. The claimant is overpaid \$2,520.00.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw