

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOIS J KOCK

Claimant

APPEAL NO. 09A-UI-11776-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION

Employer

OC: 01/04/09

Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated August 7, 2009, reference 02, which held that Lois Kock was no longer temporarily unemployed and had to start making job contacts. After due notice was issued, a hearing was held by telephone on September 1, 2009. Ms. Kock participated personally and offered additional testimony from Danielle Kinney. The employer participated by Jennifer Grandgenett, Human Resources Representative.

ISSUE:

At issue in this matter is whether Ms. Kock 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: Ms. Kock began working for Pella Corporation on May 5, 1997 and worked full time in assembly. On or about January 2, 2009, she began a voluntary layoff. She was guaranteed that she would be recalled on or before September 1, 2009. She was told that a failure to return when recalled would be considered a resignation.

On April 20, Ms. Kock was contacted and recalled to work to the same job with the same pay and benefits. She would have been placed in a different department than she had last worked in but she had worked in the department previously. She asked for time to consider coming back and notified the employer on April 20 that she would not be returning. She was to return within two weeks of being recalled.

Ms. Kock did not return because she found the work had taken its toll on her body. She was not advised by a doctor not to return. She did not ask about the availability of other, lighter work. Ms. Kock also declined to return because she had gotten married and there were family issues with the children.

Ms. Kock received \$4,125.00 in regular job insurance benefits from May 3 through July 18, 2009. She received \$2,617.00 in emergency unemployment compensation from July 19 through September 5, 2009.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Ms. Kock quit her job when she failed to return to work when recalled. 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). Ms. Kock did not come back because the work was hard on her body but she was not advised by a doctor to quit. She also declined to return because of family issues at home. The evidence of record does not establish any good cause attributable to the employer for Ms. Kock's quit. For the above reasons, the separation was a disqualifying event.

Ms. Kock has received job insurance benefits subsequent to when she would have returned to work. She had until May 2 to return to work but continued to receive job insurance benefits through the week ending September 5, 2009. 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 August 7, 2009, reference 02, is hereby reversed. Ms. Kock quit her employment with Pella Corporation for no good cause attributable to the employer. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Kock will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css