

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

EVELYN D HOPKINS  
1227 – 5<sup>TH</sup> ST SE  
CEDAR RAPIDS IA 52401

PAULETTE'S HOUSE OF BEAUTY  
815 – 15<sup>TH</sup> ST SE  
CEDAR RAPIDS IA 52403

Appeal Number: 04A-UI-01678-BT  
OC: 01/04/04 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Paulette's House of Beauty (employer) appealed an unemployment insurance decision dated February 11, 2004, reference 02, which held that Evelyn Hopkins (claimant) was eligible for unemployment insurance benefits because she was laid off work with Paulette's House of Beauty (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2004. The claimant provided a telephone number but that number was repeatedly busy at the scheduled time of the hearing, and

therefore, the claimant did not participate. The employer participated through owner Paulette Clark.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer for 13 years as a cosmetologist. The employer sold the business to 'Simply You', who took over as of July 1, 2003. The claimant continued working for 'Simply You' until she quit because her license expired. The claimant was not laid off due to lack of work.

The claimant filed a claim for unemployment insurance benefits effective February 11, 2004 and has received benefits after the separation from employment in the amount of \$330.00.

The claimant contacted the Appeals Section at 12:15 p.m. The record closed at 11:19 a.m. The claimant received the hearing notice prior to the March 22, 2004 hearing. She followed the hearing notice instructions by providing a telephone number but that number was repeatedly busy when the Administrative Law Judge called it. The claimant requested that the record be reopened.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. If a party responds to a hearing notice after the record has been closed, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant called the Appeals Section at 12:15 p.m. for her 11:00 a.m. hearing. She had provided a telephone number but that number was repeatedly busy when the Administrative Law Judge called it. Although the claimant intended to participate in the hearing, she was not available at the number provided and did not contact the Appeals Section until an hour after the scheduled hearing. Furthermore, intent to participate is not the determining factor when evaluating whether good cause exists to reopen the record when a party fails to participate. The claimant did not establish good cause to reopen the hearing. Therefore, her request to reopen the hearing is denied.

The next issue in this case is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer has discharged the claimant for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant was not laid off work but opted to quit. 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). The claimant demonstrated her intent to quit and acted to carry it out when she quit

because her license expired. The claimant failed to establish good cause for quitting her employment. Benefits are denied.

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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated February 11, 2004, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$330.00.

sdb/kjf