

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI J NIELSEN
Claimant

APPEAL NO. 10A-UI-10298-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US BANK NATIONAL ASSOCIATION
Employer

OC: 06/20/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, US Bank, filed an appeal from a decision dated July 14, 2010, reference 01. The decision allowed benefits to the claimant, Kristi Nielsen. After due notice was issued, a hearing was held by telephone conference call on September 7, 2010. The claimant participated on her own behalf. The employer participated by Operations Manager Cindy Anderson.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kristi Nielsen was employed by US Bank from June 26, 2000 until June 22, 2010 as a full-time branch manager in Avoca, Iowa. District Manager Deb Mantch and Operations Manager Cindy Anderson went to the claimant's branch bank on June 22, 2010, to gather information and input on alleged policy violations. The meeting lasted approximately 15 minutes, during which time the claimant was asked some questions to enable her to explain her position regarding reports she had failed to follow required procedures.

No decision had been made by the employer one way or the other regarding any disciplinary action when the claimant stated she wished to resign. She knew she had violated at least one policy by counting the vault by herself when policy required at least one other person to be present. The employer accepted her offer to resign and she did so at that time.

Kristi Nielsen has received unemployment benefits since filing a claim with an effective date of June 20, 2010.

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 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The claimant resigned because she feared the meeting with her superiors would end in discharge after she acknowledged failing to follow at least one policy. The employer had not yet come to any firm decision regarding Ms. Nielson's employment at the time she offered her resignation. She was not given a choice of resigning or being discharged as required under the provisions of the above Administrative Code section. Her decision to quit was based on her fear she might be discharged, which is not the same matter. Her resignation was without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 14, 2010, reference 01, is reversed. Kristi Nielsen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw