

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBAL FOX
Claimant

APPEAL NO. 11A-UI-09711-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 06/19/11
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Mosaic (employer) appealed an unemployment insurance decision dated July 14, 2011, reference 01, which held that Kimbal Fox (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2011. The claimant participated in the hearing. The employer participated through Tammy Harrah, direct support coordinator; Shanda Hiatt, human resources manager; and Alyce Smolsky, employer representative. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time direct support associate from June 25, 2010 through May 6, 2011, when she was considered to have voluntarily quit her employment. Her last day of work was April 26, 2011, and she subsequently went to North Carolina to help care for her daughter and grandchildren. The claimant's son-in-law is in the military, but he was working at the base in North Carolina and not stationed elsewhere at that time. The claimant's daughter was in the hospital because she was pregnant and on complete bed rest. The only way she could get out of the hospital was if she had someone there to help care for her and her children. The claimant said her son-in-law could not take time off work.

The claimant spoke with Tammy Harrah, direct support coordinator, on May 6, 2011 and requested a leave of absence until the middle of June 2011. The leave was not approved, due to the hardship it would have caused the agency. The employer advised the claimant she

needed to return to work by May 12, 2011. The claimant told Mr. Harrah that she would not be able to do that and was going to end her employment effective that day. The claimant denies that she said she was going to end her employment that day.

The employer sent the claimant a certified letter dated May 6, 2011 that detailed the conversation between Ms. Harrah and the claimant on May 6, 2011. The claimant's husband signed for the letter on May 11, 2011. The claimant did not call the employer or return to work on May 12, 2011. She subsequently contacted the employer and the employer sent her a letter dated June 20, 2011 advising her that her employment was terminated when she did not return to work on May 6, 2011.

The claimant filed a claim for unemployment insurance benefits effective June 19, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to return to work after April 26, 2011. She left without notice or authorization and subsequently wanted approval for a leave of absence. The employer graciously allowed the claimant two weeks of leave per policy but could not allow anymore due to the needs of the business. The claimant did not return to work on May 12, 2011 and was considered to have voluntarily quit.

The claimant's separation does not fall under Iowa Code § 96.5-1-c, because she went to North Carolina to take care of her daughter's children. Her daughter was in the hospital and could have remained there if she needed care. Her son-in-law was not deployed at the time and there was no explanation as to why he could not take a military leave to watch his own children.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer

will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 14, 2011, reference 01, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw