

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

SHELLY R LAWSON  
506 – 2<sup>ND</sup> ST  
WILLIAMS IA 50271

BERRY IOWA CORPORATION  
C/o THOMAS AND THORNGREN  
PO BOX 280100  
NASHVILLE IA 37228

Appeal Number: 05A-UI-03594-BT  
OC: 02/06/05 R: 01  
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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Berry Iowa Corporation (employer) appealed an unemployment insurance decision dated March 29, 2005, reference 01, which held that Shelly Lawson (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 April 26, 2005. The claimant participated in the hearing. The employer participated through Judy Hammarmeister, Human Resources Supervisor.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service representative from May 4, 2004 through February 7, 2005. Her last day of work was January 31, 2005 and that night she was admitted to the hospital for depression and anxiety. She was released a couple days later and spoke with the employer on Friday, February 4, 2005, indicating she would return to work on the following Monday. The claimant felt her two female co-workers treated her poorly. If she happened to be absent, the other workers got behind and they were not very happy with the claimant. The claimant felt the co-workers gave her the cold shoulder and alienated her. There were also problems with the shipping manager, who was not in a supervisory position. He got angry with her and yelled at her as a result of problems and even threw shipping papers at her. On February 7, 2005, the claimant called her employer and reported that she did not feel she could return to work. The claimant felt her health condition was due to a hostile work environment but never informed the employer she was going to have to quit as a result of it.

The claimant filed a claim for unemployment insurance benefits effective February 6, 2005 and has received benefits after the separation from employment in the amount of \$3,096.00.

#### REASONING AND CONCLUSIONS OF LAW:

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

Rule 871 IAC 24.25 provides that, 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 from whom the employee has separated. The claimant did express her intent not to return work with the employer. 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 called her employer and reported she would not be returning to work.

The claimant quit her employment due to what she perceived to be a hostile work environment. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The evidence provided by the claimant does not amount to a hostile work environment even though it was not the best of situations. The law presumes it is a quit without good cause attributable to the employer when an employee leaves as a result of an inability to work with other employees. 871 IAC 24.25(6).

Additionally, it is the claimant's contention that she quit her employment due to her health, since the stress of her job was contributing to her depression and anxiety. Assuming this is correct, she never provided the employer with any medical documentation establishing it was work-related and never told the employer she intended to quit prior to actually quitting. An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v.

Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment, the separation was without good cause attributable to the employer. 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 March 29, 2005, 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 claimant is overpaid benefits in the amount of \$3,096.00.

sdb/sc