

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE A DAVENPORT**  
Claimant

**APPEAL NO. 07A-UI-04028-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NELLART INC**  
**HACIENDA LAS GLORIAS #2**  
Employer

**OC: 03/18/07 R: 03**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Nellart (employer) appealed a representative's April 10, 2007 decision (reference 02) that concluded Julie Davenport (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2007. The claimant participated personally. The employer participated by Edgar Barrios, Owner; Kent Millsap, Manager; and Tia Barrios, Waitress.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**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 hired on November 30, 2005, as a part-time bartender. On March 9, 2007, the claimant arrived at work late because she gave the cook a ride to work. When she arrived at work her co-workers could see she was in a bad mood. The claimant had to get her station ready and was unhappy that she had to carry supplies when she was pregnant. After the claimant was at work for about ten minutes she told a co-worker she was not feeling well and clocked out. On the way out she told her manager she was ill. The manager did not hear the claimant say she was ill. The manager told her that it was evident she was in a bad mood. He told her she should call before she came back. The claimant never contacted the employer again. Continued work was available had the claimant not resigned.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.25(21) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

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's intention to voluntarily leave work was evidenced by her actions. She walked off the job and quit work. When an employee quits work because she is dissatisfied with the work environment, her leaving is without good cause attributable to the employer. The claimant left work because she did not like her work environment. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit 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.

The claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's April 10, 2007 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant is overpaid benefits in the amount of \$420.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs