

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

DARCY L COUCH  
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IOWA DEPARTMENT OF  
CORRECTIONS AT CLARINDA  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

IOWA DEPARTMENT OF  
CORRECTIONS AT CLARINDA  
c/o TALX UCM SERVICES INC  
DES MOINES APPELLATE SERVICES  
3799 VILLAGE RUN DR  
DES MOINES IA 50317

Appeal Number: 05A-UI-05936-RT  
OC: 05-08-05 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Iowa Department of Corrections at Clarinda, filed a timely appeal from an unemployment insurance decision dated May 26, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Darcy L. Couch. After due notice was issued, a telephone hearing was held on June 28, 2005, with the claimant participating. David Sperry, Food Services Director, and Vicki Lasley, Assistant Food Services Director, participated in the hearing for the employer. The employer was represented by David Williams of TALX UCM Services, Inc. Claimant's Exhibit A was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance

records for the claimant. A hearing in this matter was scheduled for June 20, 2005 at 10:00 a.m. and rescheduled.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time correctional food service coordinator from June 26, 2000 until she was separated from her employment on May 9, 2005. On that day, the claimant was called into the office of the Food Services Director, David Sperry, one of the employer's witnesses. The claimant was questioned about an incident occurring earlier that day when she had obtained the assistance of an inmate and taken the inmate in her personal car from the kitchen, which was outside the prison fence and went into the prison to deliver lunches. The claimant is not supposed to take inmates in her personal vehicle. The claimant had done so to assist her in delivering 18 sack lunches. The security director for the employer, Jim Payne, had called Mr. Sperry about this matter and had asked for some kind of an investigation. The employer's other witness, Vicki Lasley, Assistant Food Services Director, had also received a call from prison officials asking for information.

Present at the meeting on May 9, 2005 were the claimant, Mr. Sperry, and Ms. Lasley. The claimant was questioned about the incident with the inmate. The claimant was not told during that meeting that she was or would be fired or discharged or suspended or disciplined. Mr. Sperry and Ms. Lasley were merely getting answers to questions. Towards the end of that meeting the claimant stood up and informed Mr. Sperry: "I'll make this easy for you. I quit." Mr. Sperry said: "Okay." The claimant then threw her keys and identification on the desk and told Ms. Lasley to take care of her time since it was 1:30 p.m. and it was time for the claimant to clock out and the claimant no longer had her identification. The claimant left briefly and then returned to get some personal keys from the keys left with the employer and then left again. Later in the afternoon on that day Mr. Sperry called the claimant and informed her that he had accepted her resignation when he had indicated "okay" at the meeting and told the claimant that she needed to sign a paper indicating that she had resigned. Mr. Sperry told the claimant that he could mail her the paper or that she could stop by and sign it. The claimant said that she would stop by and sign it when she returned her uniforms.

On May 10, 2005, the claimant called Mr. Sperry and left a voice mail message stating that she was not going to sign the document that he had requested that she sign about her resignation and that the employer was going to have to fire her. Later in the morning on that day the claimant called again and spoke to Mr. Sperry. The claimant said something about how her offense with the inmate would only involve a three-day suspension and she asked Mr. Sperry what he thought. Mr. Sperry indicated to the claimant that she had resigned and he had accepted her resignation and she was no longer an employee. No further contact was had between the parties.

Pursuant to her claim for unemployment insurance benefits filed effective May 8, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,932.00 as follows: \$322.00 per week for six weeks from benefit week ending May 21, 2005 to benefit week ending June 25, 2005. However, of that amount \$322.00 was offset against an overpayment for benefit week ending June 18, 2005 for vacation pay. Therefore, total benefits received by the claimant for the period in question is \$1,610.00. The claimant's overpayment balance is zero.

## REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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 24.25(28) 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:

- (28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit on May 9, 2005 when she so informed the employer and then threw her keys and identification on the desk. The claimant maintains that she was discharged on May 11, 2005 when she spoke to the employer's witness, David Sperry, Food Services Director. However, even the claimant conceded that when she did speak to Mr. Sperry, he did not say that she was discharged or fired but rather informed her that she had resigned and he had accepted her resignation. The claimant's other testimony is not credible. The claimant first testified that she was discharged on May 9, 2005 and then testified on May 10, 2005 and finally testified on May 11, 2005. Also casting doubt on the claimant's credibility is the claimant's testimony that the Department of Correction's policies permit inmates to ride in personal vehicles and presented Claimant's Exhibit A as evidence thereof. However, nothing in the policy says anything about inmates riding in vehicles. In fact the policy states that unauthorized individuals should not be transported in state or personal vehicles. The claimant denies that she said she quit on May 9, 2005 but her testimony is not persuasive. Mr. Sperry and the employer's other witness, Vicki Lasley, Assistant Food Services Director, credibly testified that the claimant stood up and announced: "I'll make this easy for you. I quit." The two witnesses then credibly testified that the claimant threw her keys and identification on the desk. The claimant concedes that she did hand her keys and identification to the employer and could provide no reasonable explanation as to why she did so. Under the evidence here, the administrative law judge concludes that the claimant did announce her quit and did throw her keys and identification on the desk, which statements and acts both demonstrate an intent to terminate the employment relationship and are overt acts carrying out that intention as required

for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). There is no evidence that at this meeting the claimant was ever told that she was fired or discharged or suspended or disciplined. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on May 9, 2005. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The only possible reason for the claimant's quit on May 9, 2005 was the questioning of the claimant about an incident with an inmate riding in her personal vehicle. At most this was in the nature of a reprimand but leaving work voluntarily because of a reprimand is not good cause attributable to the employer. There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. Accordingly, the administrative law judge concludes that the claimant voluntarily left her employment on May 9, 2005, without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

There is some evidence of contacts between the claimant and Mr. Sperry after her quit. At best these contacts would be characterized as an attempt to revoke or withdraw her resignation. In Langley v. Employment Appeal Board, 490 N.W.2d 300 (Iowa App. 1992), the Iowa Court of Appeals held that an employee who voluntarily resigns and the employer refuses to accept a subsequent withdrawal of resignation prior to its effective date, the employee is considered to have voluntarily quit for purposes of eligibility for unemployment insurance benefits. Here, it appears that the claimant, if she did at all, attempted to withdraw or revoke her resignation after its effective date and, further, the employer had already accepted the resignation when Mr. Sperry told the claimant "Okay" right after she had announced her quit on May 9, 2005 and later on May 9, 2005 when Mr. Sperry called and spoke to the claimant or left a message for the claimant indicating that he had accepted her resignation when he said: "Okay" to the claimant after she had quit. Accordingly, the administrative law judge concludes that any attempt by the claimant to revoke or withdraw her resignation failed.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,610.00 since separating from the employer herein on or about May 9, 2005 and filing for such benefits effective May 8, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 26, 2005, reference 01, is reversed. The claimant, Darcy L. Couch, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. She has been overpaid unemployment insurance benefits in the amount of \$1,610.00.

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