

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

SHERRI ARENDS
921 W 11TH ST
CEDAR FALLS IA 50613-2409

GRAY TRANSPORTATION INC
PO BOX 2365
WATERLOO IA 50704

Appeal Number: 06A-UI-08161-BT
OC: 07/23/06 R: 03
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, 4th 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:

Gray Transportation (employer) appealed an unemployment insurance decision dated August 11, 2006, reference 01, which held that Sherri Arends (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 11, 2006. The claimant participated in the hearing. The employer participated through Darrin Gray, President; Leroy Gray, CEO; and James Neunkirk, Tire Mechanic.

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 full-time from January 10, 2005 through July 24, 2006, when she voluntarily quit. She worked in the maintenance department and approximately three months prior to her separation, she was given the title and salary of maintenance manager. A maintenance assistant had just quit and the claimant went to the employer and suggested the employer forego hiring anyone. She suggested it would be to the employer's advantage to increase her salary and have her do the work of the assistant along with her own. The employer agreed despite the misgivings of Leroy Gray, the CEO. However, the claimant was not implementing programs as expected and after several months, a meeting was held on approximately July 19, 2006 to discuss the problems. The claimant became defensive and aggressive when questioned about why the programs were not in effect. She told the employer she could quit if they were not happy with her.

On Saturday, July 22, 2006, the employer was called to bring semi-trailers into and out of the loading docks for Tyson, another company. Four trucks were needed but only one truck was working and the company president was trying to resolve the problem. The claimant effectively told the employer there was nothing she could do about it. The two mechanics who had company cell phones were out of town and unavailable. On Monday, July 24, 2006, Leroy Gray went to the claimant's office to talk to her and James Neunkirk, the tire mechanic, was also there but the claimant was on the telephone. Mr. Gray and Mr. Neunkirk were talking to each other when the claimant stopped talking on the phone and asked Mr. Gray if he wanted "to get rid of those two guys." Mr. Gray said yes, if they could not be available in an emergency when he needed them to be available. She proceeded with her telephone call and shortly thereafter stopped again and interrupted Mr. Gray and Mr. Neunkirk's conversation by stating, "Then maybe we should all walk out." Mr. Gray told her to leave if she was not happy there. The claimant made a third sarcastic comment to Mr. Gray and he lost his temper and said, "Fuck you Sherri" and walked out of her office. Mr. Neunkirk was still in the claimant's office and observed the claimant call the president to tell him she was walking out. She told the president that "Leroy" was in her office and she was tired of this.

The claimant filed a claim for unemployment insurance benefits effective August 11, 2006 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. The weight of the evidence indicates that she quit the employment and was not discharged. The question for the administrative law judge is whether the claimant's quit was for good cause attributable to the employer.

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 when she called the president of the company on July 24, 2006 and told him she was walking out. Although the claimant contends she was fired, her testimony was not found as credible as the other three witnesses because she was not very forthright and tended to hedge her answers. Additionally, she mentioned that one of the reasons she called the president was to make sure the phones were covered since she was leaving. If she had been fired, the employer would

have already been aware of that fact. Also, the claimant mentioned she asked Mr. Neunkirk whether he thought she was fired or that she quit and even though she reported that he thought she was fired, it was based on the employer saying "fuck you" as opposed to "get the fuck out" as she is claiming.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She quit her employment because the employer used profanity towards her. The claimant confirmed profanity was commonplace in the work area even though she did not use it. And while the employer's profanity was completely unprofessional, the words alone are not considered good cause to quit. The claimant has not satisfied her burden. 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 August 11, 2006, 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 \$1,041.00.

sda/pjs