

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN R BAKER**  
Claimant

**APPEAL NO. 10A-UI-02559-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK TRIP INC**  
Employer

**OC: 12/13/09**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

Kwik Trip, Inc. filed a timely appeal from a representative's decision dated February 9, 2010, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on March 30, 2010. Although duly notified, the claimant did not participate. The employer participated by Steven Tupy, Manager.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Karen Baker was employed by Kwik Trip, Inc. as a part-time cashier from June 12, 2009 until September 4, 2009 when she discontinued reporting for scheduled work. Ms. Baker was paid by the hour. Her immediate supervisor was Steven Tupy.

Ms. Baker did not report for scheduled work on September 5, 2009 or thereafter and provided no notification to the employer regarding her impending absences. Prior to leaving employment the claimant had complained about the conduct of an assistant manager. The employer had investigated the complaint and taken action. The employer received no further complaints from Ms. Baker prior to her leaving without notice. The employer was unaware of any other dissatisfactions or issues. The claimant did not respond to a message left by the employer inquiring as to why she was not reporting for work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting or to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to an employer for leaving employment is not a subjective test as to whether the employee themselves feel they have good cause but an objective test as to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 33 (Iowa 1988).

The administrative law judge concludes based upon the evidence in the record that the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment. The employer reasonably believed that all complaints had been resolved and Ms. Baker brought no further complaints to the attention of the employer before leaving employment without notice and without reason. The separation, therefore, was without good cause attributable to the employer. Benefits are denied. The claimant has received unemployment insurance benefits to which she is not entitled.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated February 9, 2010, reference 02, is reversed. Karen Baker is disqualified and benefits are withheld until she has worked in and earned wages of insured work equaling ten times her weekly benefit amount, provided that she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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