

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE R NOCK**  
Claimant

**APPEAL NO. 11A-UI-13997-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**3D BUILDERS LLC**  
Employer

**OC: 09/25/11  
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, 3D Builders, filed an appeal from a decision dated October 17, 2011, reference 01. The decision allowed benefits to the claimant, Julie Nock, from September 25 through October 8, 2011, and disqualified her after that date. After due notice was issued a hearing was held by telephone conference call on November 17, 2011. The claimant participated on her own behalf. The employer participated by Bookkeeper Jean Newman and Co-Owners Shelly Gustin and Mark Moorman.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer and whether she is eligible for benefits from September 25 through October 8, 2011.

**FINDINGS OF FACT:**

Julie Nock was employed by 3D Builders from October 11, 2010 until September 28, 2011 as a part-time office administrator. She gave a verbal and a written resignation to Co-Owner Shelly Gustin indicating she had found a full-time job and her last day of work would be September 28, 2011. For the week September 25 through October 1, 2011, she worked 26.75 hours at 3D Builders and reported the wages when she filed her claim for benefits effective September 25, 2011. Ms. Nock had, prior to resigning, requested and been granted unpaid time off for the week of October 2 through 8, 2011.

Iowa Workforce Development issued a decision dated November 15, 2011, finding the claimant was ineligible for benefits for the week October 2 through 8, 2011, because of personal reasons or obligations.

Julie Nock has received unemployment benefits since filing a claim with an effective date of September 25, 2011.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant quit in order to accept new employment but had not yet begun working for the new employer prior to filing her claim for benefits. Under the provisions of the above Iowa Code section, she had not requalified as of the date she filed her claim for benefits.

Although she did report wages for the first week of her claim, she also worked for her current employer more than half the regular work week. She is therefore not able and available for work in the labor market and is ineligible for unemployment benefits.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 17, 2011, reference 01, is reversed. Julie Nock is not eligible for benefits for the one-week period beginning September 25, 2011, because she was working sufficient hours to be considered employed. After that week, she had personal reasons and obligations that also resulted in her being ineligible. She is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw