

**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**

**STEPHANIE D SMITH
838 E MADISON AVE
DES MOINES IA 50313**

**BEAR BASICS CHILDREN CENTER INC
D/B/A BEAR BASICS CHILDREN CTR
135 DOUGLAS
DES MOINES IA 50313-4400**

**Appeal Number: 04O-UI-11375-RT
OC: 07-25-04 R: 02
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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Bear Basics Children Center, Inc., doing business as Bear Basics Children Center, filed a timely appeal from an unemployment insurance decision dated August 16, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Stephanie D. Smith. After due notice was issued, a telephone hearing was held on November 15, 2004, with the claimant not participating. Although the claimant had called in a telephone number where she purportedly could be reached for the hearing, when the administrative law judge twice tried to call that number at 9:01 a.m. and again at 9:03 a.m., the administrative law judge reached a voice mail. The voice mail did not identify the number or the name of the person. On both occasions the administrative law judge left a message for the claimant that he was going to

proceed with the hearing and if the claimant wanted to participate in the hearing she needed to call before the hearing was over and the record was closed. The administrative law judge provided a telephone number for the claimant to call. The hearing began when the record was opened at 9:06 a.m. and ended when the record was closed at 9:18 a.m. and the claimant had not called during that time. Betty Bolin, Director, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

An initial hearing on this matter was held on September 15, 2004 without the claimant's participation. At that time the claimant had not called in a telephone number where she could be reached for the hearing. By a decision dated September 23, 2004, the administrative law judge who heard the case reversed the representative's decision and denied benefits to the claimant. The claimant appealed this decision to the Employment Appeal Board. By decision dated October 19, 2004, the Employment Appeal Board remanded this matter for another hearing because the claimant had not participated in the first hearing through no fault of her own since she had not received a notice. Here, it is apparent that the claimant received the notice for the hearing because she called in a telephone number where she purportedly could be reached for the hearing. However, the claimant was not at that number when called by the administrative law judge.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time lead teacher from March 2, 2000 until she voluntarily quit on July 22, 2004. On July 21, 2004, a coworker, Tonya, a cook, noticed that her daughter was missing. She tried to file a missing persons report with the police but could not because it had not been 24 hours since the daughter had been missing. The claimant had harbored the claimant's daughter at her house. On July 22, 2004, although Tonya was not scheduled to work at that time, she was at work when the claimant arrived and confronted the claimant. No threats were made by Tonya. Tonya was upset and crying and left. The employer's witness, Betty Bolin, Director, then confronted the claimant and asked her how she could do such a thing. The claimant said she did not "need this shit" and started to leave. Ms. Bolin told the claimant that she needed the staff and asked the claimant to stay. The claimant repeated that she did not "need this shit" and left. Ms. Bolin did not tell the claimant that she was fired or discharged or ask the claimant to leave but in fact had asked the claimant not to leave. Nevertheless, the claimant left and has never returned to the employer and offered to go back to work. The claimant had never expressed any concerns to Ms. Bolin about her working conditions nor had she done so to anyone else that Ms. Bolin heard about. The claimant had also never indicated or announced an intention to quit to Ms. Bolin if problems she had at work were not addressed by the employer nor did she do so to anyone else that Ms. Bolin heard about. If the claimant had not left and stayed to work, work was and would have been available for the claimant. Pursuant to her claim for unemployment insurance benefits filed effective July 25, 2004, the claimant has received unemployment insurance benefits in the amount of \$388.00 as follows: \$194.00 per week for two weeks, benefit weeks ending July 31, 2004 and August 7, 2004. This amount is now shown as overpaid.

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.

The employer's witness, Betty Bolin, Director, credibly testified, and the administrative law judge concludes, that the claimant left her employment voluntarily when she walked out and failed to work that day and never returned to work thereafter. Ms. Bolin credibly testified that she never told the claimant that she was fired or discharged nor did she ask the claimant to leave. In fact, Ms. Bolin credibly testified that she had asked the claimant to stay and the claimant chose not to do so and rather said, "I don't need this shit" on two occasions and left despite being asked to stay by Ms. Bolin. By leaving work even though she was asked to stay and never returning to work thereafter the claimant both demonstrated an intention to terminate the employment relationship and performed an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on July 22, 2004. 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 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 claimant did not participate in the hearing and provide evidence of reasons attributable to the employer for her quit. Ms. Bolin credibly testified that the claimant quit when she walked out of work because of a confrontation with a coworker when the claimant was harboring the coworker's daughter. However, the coworker never threatened the claimant and the coworker left before the claimant did. There appears to be no reasons attributable to the employer for her quit. Rather, it appears that the claimant quit because of a personal issue unrelated to her employment involving a coworker. Leaving work for compelling personal reasons when the period of absence exceeds ten working days is not good cause attributable to the employer. Further, leaving work as a result of an inability to work with other employees is also 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. There is no evidence that the claimant ever expressed any concerns to the employer about her working conditions or indicated or announced an intention to quit if her concerns were not addressed by the employer. The claimant never gave the employer any opportunity to address any concerns that the claimant may have had. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on July 22, 2004, 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.

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 \$388.00 since separating from the employer herein on or about July 22, 2004 and filing for such benefits effective July 25, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 16, 2004, reference 01, is reversed. The claimant, Stephanie D. Smith, 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. The claimant has been overpaid unemployment insurance benefits in the amount of \$388.00.

pjs/b