

**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**

**REBECCA M SMITH
5001 LAKEWOOD DR
NORWALK IA 50211**

**MAX SCHOTT & ASSOCIATES PC
6611 UNIVERSITY AVE #200
DES MOINES IA 50311**

**Appeal Number: 04A-UI-10845-D
OC: 09/12/04 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 Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Max Schott & Associates, P.C. (employer) appealed a representative's September 27, 2004 decision (reference 01) that concluded Rebecca M. Smith (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 3, 2004. The claimant participated in the hearing. Chris Godfrey, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Jean Mauss and Niki Fisher. During the hearing, Employer's Exhibit One was entered into evidence. Based

on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 1997. She worked full time as a legal assistant in the employer's law firm. Her last day of work was May 21, 2004.

Ms. Mauss became an associate with the firm in September 1999; by approximately June 2002, she had become the claimant's supervisor in the firm's social security and disability determination appeal division. The claimant felt that Ms. Mauss was overly critical of her work and did not provide any positive reinforcement. In September 2003, Ms. Mauss did some reshuffling of duties within the division; the claimant felt that she was being given more work to do than she could reasonably accomplish in the allotted time.

About a half hour before the end of the claimant's workday on Friday, May 21, Ms. Mauss called her into a meeting that also included Ms. Fisher, the other associate in the division. Ms. Mauss explained that she was going to go through some concerns and then would give the claimant two options, one, to agree to four weeks of retraining, or two, resignation with a three-month severance package. She then proceeded to go through concerns she had with the claimant's work performance. Her greatest concern dealt with the accuracy of forms prepared by the claimant, as well as the claimant's lack of follow through on assignments. At the end of the meeting, Ms. Mauss told the claimant to think about the options over the weekend, said that she was sure that they could work things through, and that they would meet again Monday morning, May 24. The claimant then left for home.

At home over the weekend, the claimant was very upset about the situation, and spoke with her son, who was also an associate with the employer's firm. She indicated that she felt she needed more time to make a decision, so her son contacted Max Schott, the managing partner. Through the claimant's son, Mr. Schott indicated that the claimant should take as much time as she needed to make her decision. Ms. Mauss was still anticipating that the claimant would return and go through the retraining. No determination had been made as to what would happen if Ms. Mauss was still unhappy with the claimant's performance at the end of the proposed retraining period; continued work was available for the claimant.

On May 27, 2004, the claimant sent word to the employer through her son that she was not going to be returning to her employment with the employer. She proceeded to work out the details of the severance package.

The claimant established a claim for unemployment insurance benefits effective September 12, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,170.00.

REASONING AND CONCLUSIONS OF LAW:

The critical issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

Where an individual mistakenly believes that she or he is discharged and discontinues reporting to work, but was never told she or he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

871 IAC 24.25 provides examples of situations which are considered to be voluntary quits without good cause, including:

871 IAC 24.25(27), (28), (33) provide:

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:

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The employer had not told the claimant that she was fired, nor had she been told that she could quit or be fired, so as to make a quit involuntary. 871 IAC 24.26(21). Her choice was not between quitting or being fired; rather, her choice was between agreeing to continue her employment and go through the retraining or quit. Given that those were her choices, the claimant was not "compelled" to resign under 871 IAC 24.26(21). The claimant chose not to continue in her employment because she did not believe that the retraining would do any good; however, the employer had not indicated that she would be discharged if the employer were still dissatisfied after four weeks. The claimant chose not to pursue the opportunity because of her dissatisfaction with her relationship with Ms. Mauss. By informing the employer that she would not be returning to her position, the claimant acted in a manner such that the employer would reasonably believe she had resigned her position, even though she did not formally state that she was quitting or resigning. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code Section 96.6-2.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting

because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied that 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 representative's September 27, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of May 27, 2004, benefits are withheld until such time as the claimant has worked in and 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 \$2,170.00.

ld/kjf