

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

MARILYN BUNKERS
13617 SHAMROCK AVE
REMSEN IA 51050

SOMMERFELD ENTERPRISES INC
40328 – 220TH ST
LE MARS IA 51031

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ATTORNEY AT LAW
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Appeal Number: 05O-UI-11553-BT
OC: 07/03/05 R: 01
Claimant: Appellant (1)

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:

Marilyn Bunkers (claimant) appealed an unemployment insurance decision dated July 21, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Sommerfeld Enterprises, Inc. (employer) without good cause attributable to the employer. The matter was originally set for hearing on August 15, 2005 but the administrative law judge rescheduled it. It was then set for hearing on August 29, 2005 but a postponement was granted to the employer due to his mother-in-law's emergency surgery. The new hearing date was September 14, 2005 and the employer requested a subsequent postponement because his mother-in-law had passed away and the

funeral was being held on this same date. Administrative Law Judge Renegar denied the second postponement and conducted a hearing on this matter in appeal 05A-UI-07754-RT, in which benefits were allowed. The employer appealed the decision and the Employment Appeal Board ruled that the second postponement should have been granted. The Board remanded for a new hearing in an order dated November 7, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2005. The claimant participated in the hearing with Attorney Gene Collins. The employer participated through co-owner Linda Sommerfeld and secretaries Pat Reuter and Marlene Goecke.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a mail order catalog company for wood working tools. The claimant was employed as a full-time secretary/office manager from July 1997 through June 30, 2005. She voluntarily quit her employment on June 28, 2005 with an effective date of June 30, 2005 after she took two days of vacation. When the claimant was hired, the employer did not provide for vacation days but did provide paid holidays. After approximately one to two years, the employer gave the claimant 48 hours of vacation, one week plus the claimant's birthday. The claimant did not use all her vacation time and it carried over. Near the end of 2001, the claimant needed money so she asked her employer if she could cash in her vacation. The employer agreed but did so as a favor and told the claimant it would not be done again. The employer had hired some new employees at that point and had to make some changes, including not allowing employees to carry over vacation days.

The employer told the claimant at the end of 2001 that she could only carry over 80 hours of vacation and if she had more, she would lose it. The claimant did not use her vacation even though the employer suggested to her each December that it would be in her best interests to do so. The employer did not remove the claimant's vacation hours even though she continued to carry them over each year. It appears the claimant and the employer had a very good relationship and the employer apparently did this out of good will towards the claimant. The claimant earned and carried 48 hours from 2002 to 2003, she used 11.5 hours in 2003 so carried over 84.5 hours to 2004, she carried over 132.5 hours from 2004 and assuming she worked the rest of the year, she had 180.5 vacation hours in 2005. At the end of December 2004, it was again stressed that vacation hours were to be used and they would be lost if they had more than 80 vacation hours at the end of the year. From January 2005 through May 2005, the claimant did not take any vacation but the employer finally put his foot down and told her that she had to use her vacation. The claimant wanted to wait until her millwork was in for her new house and the employer agreed. The claimant took vacation days on May 31 and June 1, 2, 3, 23, 24, 29 and 30. She took four hours of vacation on June 7, 22, 27 and 28. The claimant had used 80 hours so only had an additional 20 hours that she had to use before the end of the year. The employer told the claimant she could work half days and use the other half from her vacation. The employer felt the claimant needed the time off and did not want her to lose those hours. The claimant misunderstood the employer's intentions and believed the employer was cutting her hours to part-time, which was not the case. She quit her employment without notice and to the surprise of the employer.

The claimant filed a claim for unemployment insurance benefits effective July 21, 2005 and has received benefits after the separation from employment in the amount of \$2,379.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

The claimant quit her employment because she believed the employer was cutting her hours in half, but this was not the case. The employer testified that June 2005 was one of its busiest months and business was not slow. The employer also valued the claimant as a good employee and had work that only she could do, and that still has not been done. The claimant's hours were not being cut; the employer was simply requiring the claimant to use her extra vacation hours so that she would only carry a balance of 80 hours. All three-employer witnesses testified that it was the policy to carry over only 80 hours of vacation, even though it had not been strictly enforced with the claimant. The claimant used 80 hours of vacation in June 2005, so it appeared she understood what the employer wanted.

The claimant contends that only she and Mr. Sommerfield were privy to the conversation in which he said he was cutting her hours. However, based on the employer's need for the claimant's abilities and Ms. Sommerfield's testimony, it is not credible that Mr. Sommerfield was cutting her work hours. The Administrative Law Judge does find that the claimant believed that to be the case, although the reasons why she believed that are uncertain. After the claimant quit, the employer had to have a part-time employee, who was off work for the summer, come to work full-time to fill in for the claimant. There would have been no need to do that if the claimant's hours needed to be cut.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. 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 unemployment insurance decision dated July 21, 2005, reference 01, is affirmed. 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 \$2,379.00.

sdb/pjs