

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA K PASKER

Claimant

APPEAL NO: 11A-UI-15201-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOSEPH L ERTL INC

Employer

OC: 10/30/11

Claimant: Appellant (1-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(3) – Seek Other Employment
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 21, 2011, reference 01, that held she voluntarily quit without good cause attributable to her employer on September 29, 2011, and benefits are denied. A telephone hearing was held on December 20, 2011. The claimant did not participate. Jane Ertl, Vice President, participated for the employer. Employer Exhibits 1 and 2 was received as evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time laborer from May 24, 2010 to September 29, 2011. The claimant signed her resignation that she was leaving to return to work for a former employer. The employer accepted the resignation. Since claimant gave no advance notice she was quitting, there is no explanation why there was a waiting period until she started work at Modern Form.

The claimant failed to respond to the hearing notice. She received a partial unemployment benefit for the week ending November 5, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(3) provides:

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:

(3) The claimant left to seek other employment but did not secure employment.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer for other employment on September 29, 2011 that is not established by the record.

Claimant submitted a resignation the employer accepted that she was returning to work for a former employer. The department record does not identify it, and why a month passed before she regained employment. The employer witness knew claimant went back to work at Modern Form, she is not entitled to benefits while waiting to go to work for some other employer, as she could have continued work up to the return to work.

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 received a partial unemployment benefit for the week ending November 5, so the issue whether there is an overpayment is remanded to Claims.

DECISION:

The department decision dated November 21, 2011, reference 01, is affirmed. The claimant voluntarily quit without good cause on September 29, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css