

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KANE EDWARDS
Claimant

APPEAL 21A-UI-16607-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TLC OMNIBUS INC
Employer

**OC: 04/25/21
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the July 22, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2021. The claimant participated and testified. Employer participated through Owner Thomas Lloyd Connelly. Exhibit A was received into evidence.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Whether the claimant has been overpaid benefits? Whether the claimant is excused from repaying benefits because of the employer's non-participation at fact-finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed part-time as a line cook from July 6, 2019, until he was separated from employment on April 24, 2021, when he quit. The claimant was hired with at a \$10.00 per hour rate of pay. At the time of his discharge, the claimant was receiving \$15.00 per hour. The claimant reported directly to co-owners, Thomas Lloyd Connelly and Lindsay Chastain until April 27, 2021. On April 27, 2021, the claimant reported directly to Emily Mueller, who assumed the role of kitchen manager on that date.

The employer has an attendance policy. The attendance policy directs an employee to inform Mr. Connelly or Ms. Chastain of an expected absence.

On April 24, 2021, the claimant told Ms. Chastain and Mr. Connolly that he was going on break. About 20 minutes later, the claimant called Ms. Chastain. He told her that he was feeling

physically and emotionally exhausted and would not be returning the following day. He did not clarify whether this was an underlying illness or merely that he felt overworked to Ms. Chastain. The claimant sent a text message to Mr. Connolly reading, "I don't want to come back until I receive a \$2.00 raise that I think I deserve." Mr. Connolly asked the claimant if he could talk to him. The claimant replied that he would talk after receiving a \$2.00 raise.

On April 27, 2021, the claimant sent a text message to Ms. Chastain. The text message said that the claimant was going to get a doctor's note excusing him from working shifts from April 24, 2021 to April 28, 2021.

On April 28, 2021, the claimant obtained a doctor's note excusing him from shifts occurring from April 24, 2021 to April 28, 2021. The claimant provided a copy of this doctor's note. That same day, Mr. Connelly asked the claimant if he was returning to work. The claimant replied that he did not want to be contacted anymore because he considered further contact harassment.

The administrative record KFFV shows Iowa Workforce Development sent a notice of fact finding to the parties on July 7, 2021 for a fact finding interview occurring on July 21, 2021 at 1:10 p.m. Mr. Connelly participated personally at fact finding. Mr. Connelly provided text messages and other correspondence that the claimant sent him regarding his reason for quitting. The claimant made an effective claim for benefits on April 25, 2021. The claimant received sixteen full weekly benefit amounts from the week ending May 1, 2021 to the week ending August 14, 2021 for a total of \$1,936.00. The claimant received \$2,100.00 in Federal Pandemic Unemployment Compensation benefits on July 21, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. The administrative law judge further concludes the claimant is not excused from repaying benefits because the employer participated at fact finding.

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.

Iowa Admin. Code r. 871-24.25 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(21) The claimant left because of dissatisfaction with the work environment.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The administrative law judge does not find credible the claimant's allegation that the claimant offered to return to Ms. Mueller on April 27, 2021, without any conditions not credible. He also finds the claimant's allegation that he was terminated on April 28, 2021 not credible. The administrative law judge does not find this allegation credible because the claimant acknowledged Mr. Connolly reached out to the claimant on April 28, 2021. The claimant claims he said he did not want to be contacted further because he alleges he had been terminated at the time. The claimant could not explain why Mr. Connolly would be asking about whether he would return if he had already been terminated by Ms. Mueller. The claimant also could not explain why he did not explain to Mr. Connolly that it was his understanding he had been terminated. Finally, the claimant could not explain why Ms. Mueller's assumption of the kitchen manager position, a promotion from within the ranks, would have allayed his concerns regarding insufficient staffing such that he would have reconsidered returning to work for the employer.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant quit due to working conditions and specifically hours that were not atypical for the restaurant industry. This circumstance is disqualifying under Iowa Admin. Code r. 871-24.25 (21). The claimant also quit due to dissatisfaction with his wages which is disqualifying under Iowa Admin. Code r. 871-24.25 (13). While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 96.3(7)a-b, 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) (a) 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 employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing

detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The claimant received sixteen full weekly benefit amounts from the week ending May 1, 2021 to the week ending August 14, 2021 for a total of \$1,936.00.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were

not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, the employer did not participate in the fact-finding interview. Thus, claimant is not obligated to repay to the agency the benefits he received.

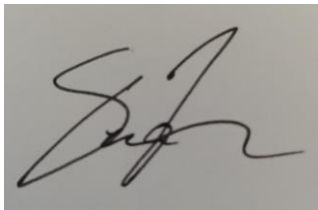
DECISION:

The July 22, 2021, (reference 01) unemployment insurance decision is reversed. The claimant quit without good cause attributable to the employer. Benefits are withheld until such time as she 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 has been overpaid unemployment insurance benefits in the amount of \$1,936.00 but is not obligated to repay the agency those benefits. The employer adequately participated at fact finding. The claimant shall repay these benefits.

REMAND:

The administrative law judge is remanding the issue regarding whether the claimant was overpaid FPUC benefits to the Benefits Bureau.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 725-9067

September 29, 2021
Decision Dated and Mailed

smn/mh