

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARIK J PETERSEN
Claimant

APPEAL 15A-UI-11770-H2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEQUEL MANAGEMENT SVCS LLC
Employer

**OC: 09/20/15
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
871 IAC 24.10 – Employer Participation in the Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the October 12, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2015. Claimant participated. Employer participated through Dalton Rucker, Team Leader and Lana Bartmess, Human Resources Director.

ISSUES:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a youth counselor beginning on May 5, 2014 through August 16, 2015 when he voluntarily quit.

The claimant worked in a position where if he or any of his co-workers were going to be absent, their shift had to be covered by someone as the youth they were working with could not be left unattended. The entire staff of youth counselor's knew they would be required from time to time to cover shifts for absent co-workers. The employer regularly posted the schedule for the upcoming month on the wall of the staff office. If changes were made to the schedule, then a picture of the new schedule would be texted to the employees. Before July 10, 2015 the claimant complained that his supervisor Lamont would change the schedule and would not tell him or notify him of the change. Thus, the claimant would think he had a day off only to receive

a call asking him why he was not at work. The claimant never complained to Lamont's supervisor, Mr. Rucker nor did he seek assistance from anyone in the human resources department, including Ms. Bartmess. The claimant knew how to contact Ms. Bartmess if he had issues or concerns as he had contacted her about other issues at least three times prior to quitting.

The claimant was required to cover for an absent co-worker the night before he went on vacation. He was not threatened with having his vacation taken away if he did not work, but was merely told that he needed to cover for an absent co-worker. After the claimant returned from his vacation on July 10 he continued to work the next six weeks without any issues or problems. He called the employer and told them he was quitting on August 16, but only mentioned that it was due to a lot of issues and that he could not deal with it anymore. The claimant had not had his schedule changed without notification between the time he returned to work after his vacation on July 10 and when he voluntarily quit on August 16.

The employer participated in the fact-finding interview through human resources assistant Susan Rogers. Ms. Rogers had no details regarding the claimant's separation from employment nor did she have anyone available that could offer any rebuttal to the specifics offered by the claimant.

Claimant has received unemployment benefits since filing a claim with an effective date of September 20, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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(6), (18) and (22) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

(18) The claimant left because of a dislike of the shift worked.

(22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 and his coworkers were required to cover shifts for absent coworkers as the client served could not be left alone. The claimant never chose to complain to anyone above his supervisor about the schedule changes, despite the fact that he knew how to and had previously contacted human resources about other issues. He was never disciplined in any way for missing or being late to a shift that he had been required to cover for an absent co-worker. During the last six weeks of the claimant's employment the schedule was never changed without notification to him. Under these circumstances that administrative law judge concludes the claimant failed to establish that he voluntarily quit due to an intolerable or detrimental work environment that was attributable to the employer. The claimant simply no longer wanted to work for the employer. Benefits must be denied.

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.

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 § 96.8, subsection 5.

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 § 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 § 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 states pursuant to § 602.10101.

871 IAC 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 § 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted 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 § 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 § 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 § 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 § 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 § 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant’s separation was disqualifying, benefits were paid to which the claimant 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 employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not have sufficient participation in the fact-finding interview. The employer did not provide any details regarding the claimant’s separation nor was the representative able to rebut any of the claimant’s allegations made at the fact-finding. Thus, the claimant is not obligated to repay the benefits he received to the agency and the employer’s account shall be charged.

DECISION:

The October 12, 2015, (reference 01) decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$1939.00 and he is not obligated to repay the agency those benefits. The employer did not have sufficient participation in the fact-finding interview and their account shall be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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