

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN L MILLER
Claimant

MCCARTHY IMPROVEMENT CO
Employer

APPEAL NO. 24A-UI-06742-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/24
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On July 25, 2024, the employer filed a timely appeal from the July 15, 2024 (reference 02) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on June 14, 2024 with good cause attributable to the employer. After due notice was issued, the appeal hearing commenced on August 15, 2024 and concluded on August 22, 2024. Brian Miller (claimant) participated. Bobbi Jo Cox represented the employer and presented additional testimony through Jared Delarm. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KFFV.

Iowa Workforce Development advised the administrative law judge that IWD cannot locate the reference 02 fact-finding materials and the deputy who conducted the fact-finding interview is no longer with IWD.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

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

Brian Miller (claimant) was employed by McCarthy Improvement Company as a full-time heavy equipment operator. Mr. Miller's most recent period of employment with McCarthy Improvement Company began in September 2023 and ended on June 17, 2024, when Mr. Miller voluntarily quit. Mr. Miller last performed work for the employer on June 13, 2024. Toward the end of the employment, Mr. Miller was assigned to help construct a retention pond at a sewage treatment

plant project in Clinton. The nature of the work made it weather-dependent. In those instances where inclement weather prevented work on the project, Mr. Miller would apply for unemployment insurance benefits if his wages for the remainder of the week did not exceed his weekly benefit amount. Mr. Miller's regular wage was \$42.75 an hour. His overtime wage was \$64.13. During the week of June 3-9, 2024, the employer provided 39.5 hours of work for which Mr. Miller earned gross wages of \$2,019.93. During the week of June 10-16, 2024, the employer provided 53 hours of work for which Mr. Miller earned \$2,543.61 in gross wages.

On Monday, June 17, 2024, Mr. Miller was off work due to weather conditions that prevented heavy equipment work at the jobsite. On that morning, Mr. Miller had his nephew, who also works for employer, convey a message to the supervisor, Jared Delarm, that Mr. Miller was "done," meaning that Mr. Miller was quitting the employment effective that same day. Mr. Miller decided that was not making enough money in the employment. Mr. Miller did not like that the weather would at times prevent work at the jobsite.

At the time Mr. Miller left the employment, the employer continued to have full-time work available for Mr. Miller. Prior to Mr. Miller's quit date, Mr. Delarm told Mr. Miller there was a chance that some of the workers assigned to the jobsite would be laid off in the next week or two. The employer had not announced a layoff and had not set an effective layoff date. Mr. Miller's sudden departure from the employment made it necessary for the employer to recruit a replacement heavy equipment operator to perform his duties.

Mr. Miller had not accepted other employment at the time he quit the employment with McCarthy Improvement Company. Mr. Miller obtains employment through a trade union. The union hall would not refer Mr. Miller for other employment so long as he remained attached to the McCarthy employment.

Mr. Miller established an "additional claim" for benefits that was effective June 23, 2024. The additional claim was based on a benefit year that began January 28, 2024. At the time of the original claim, IWD set the weekly benefit amount at \$582.00. In connection with the June 23, 2024 additional claim, IWD has paid the full weekly benefit amount to Mr. Miller for the weeks ending June 29, July 6, August 3 and August 17, 2024. The benefits paid for the four weeks total \$2,328.00.

On July 12, 2024, IWD Benefits Bureau held a fact-finding interview that addressed Mr. Miller's separation from the employment. Caroline Dach, Payroll Assistant, represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 87124.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 1 (Iowa 2005).

On the other hand, when a claimant left employment due to dissatisfaction with the work environment, the claimant is presumed to have quit without good cause attributable to the employer. See Iowa Admin. Code rule 87124.25(21).

The evidence in the record establishes a June 17, 2024 voluntary quit without good cause attributable to the employer. The claimant quit due to a purported loss of hours and wages, but the evidence does not indicate a loss of hours or wages or any change in the conditions of the employment. The nature of the employment, the project, and the claimant's trade made the work weather-dependent. The claimant quit due to dissatisfaction with the weather-dependent aspect of the employment. The evidence does not indicate intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The claimant had not accepted other employment at the time he quit. The employer had not announced a layoff impacting the claimant's employment prior to the quit. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides in relevant part as follows:

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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(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.

Iowa Administrative Code rule 87124.10(1) and (4), regarding employer participation in fact-finding interviews, provides as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(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.

...

(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.

Mr. Miller was overpaid unemployment insurance benefits. After the separation from the employment, Mr. Miller received \$2,328.00 in benefits for four weeks between June 23, 2024 and August 17, 2024. This decision disqualifies Mr. Miller for those benefits. The benefits are an overpayment of benefits. Because the employer participated in the fact-finding interview, Mr. Miller must repay the overpaid benefits. The employer's account is relieved of charges, including charge for benefits already paid to the claimant.

DECISION:

The July 15, 2024 (reference 02) decision is REVERSED. The claimant voluntarily quit the employment on June 17, 2024 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,328.00 in benefits for four weeks between June 23, 2024 and August 17, 2024. The claimant must repay the overpaid benefits. The employer's account is relieved of charges, including charge for benefits already paid to the claimant.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

August 23, 2024
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.