

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH E CIZEK
Claimant

APPEAL NO: 13A-UI-14069-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAC & FOX TRIBE
Employer

OC: 11/03/13
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 12, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant quit for reasons that qualify her to receive benefits. The claimant participated in the January 15 hearing. Lucie Roberts and Nicole Kapayou appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

Has the claimant been overpaid any benefits?

Is the claimant or employer required to pay back any overpayment of benefits?

FINDINGS OF FACT:

The claimant started working for the employer in January 1993. The claimant most recently worked full time as the food and beverage buffet supervisor.

Before Kapayou became the claimant's supervisor, they were co-workers. Kapayou became the acting food and beverage manager in June 2012 and the food and beverage manager in June 2013. When Kapayou became the acting manager, she noticed an attitude with the claimant and talked to her. During this conversation, Kapayou talked about the two of them starting over. As a co-worker, Kapayou called the claimant a "butt" because the claimant wanted to put a sign on a table a certain way.

After Kapayou became the food and beverage manager, the claimant talked to Kapayou about not being treated fairly, but primarily complained that she could not get scheduled off on weekends even though she worked for the employer for over 20 years.

The last time the claimant talked to Kapayou about the way she was treated was on February 18, 2013. Prior to February 18, it bothered the claimant a great deal when Kapayou pulled the claimant away from a customer to ask if the claimant needed any help. This bothered the claimant so much that she asked to meet with Kapayou and P.B. On February 18, 2013, the claimant was upset and became more upset when Kapayou and P.B. starting discussing personal matters and laughed about something personal between the two of them. The claimant had wanted this meeting to be about her and she walked out when it was not.

The claimant continued to believe Kapayou would not effectively communicate with her and treated her unfairly. In early October 2013 the claimant asked Kapayou to find out who was paying for Drake University's food. Kapayou became involved in other matters and did not get back to the claimant. As a result, Kapayou did not respond to the claimant's question.

On October 14 when a schedule was posted, Kapayou had not scheduled the claimant to work on Saturday, October 26. The claimant was upset about this because this gave her three days instead of just two days off from work. The claimant talked to another employee, P.B., about the schedule. P.B. talked to Kapayou. Kapayou then talked to the claimant on October 25 and asked her to work her regular hours on October 26. The claimant worked as a floater on October 26, not her usual buffet hours. Kapayou made a mistake when she had not initially scheduled the claimant on October 26.

On October 20, the Kapayou gave the claimant a warning about her attendance. The claimant was upset that she received the warning, but did not contest the warning. When an employee does use the call-in line to report an absence, the human resource department considers the absence the equivalent of a no-call/no-show incident. Kapayou issues attendance warnings after the human resource department tells her to give an employee a warning.

Two days after the claimant received the attendance warning, she submitted her two-week resignation. The claimant informed the employer she was resigning because of a hostile work environment, harassment, favoritism and Kapayou's failure to communicate with her. The claimant worked until the effective date of her resignation, November 5, 2013.

The claimant established a claim for benefits during the week of November 3, 2013. The claimant and Roberts participated at the fact-finding interview. The claimant filed claims for the weeks ending November 30, 2013, through January 18, 2014. She received her maximum weekly benefit amount of \$408.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). The claimant quit when she submitted her resignation on October 22, 2013. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant quits without good cause when she quits after receiving a reprimand. 871 IAC 24.25(28). The law also presumes a clamant quits with good cause when she leaves because of intolerable or detrimental working conditions. 871 IAC 24.26(4).

The claimant asserted she quit because of a hostile work environment and harassment. The claimant came to this conclusion based on comments that were said more than a year before she quit and for incidents that happened on or before February 18, 2013. Incidents that

happened on or before February 18 kept bothering the claimant. The recent issues that occurred in October finally led the claimant to resign. Since the claimant submitted her two-week notice two days after she received a warning, the evidence indicates she resigned after receiving a reprimand or warning. The claimant received the October 20 warning for failing to follow the proper call-in procedure, which she had been warned about earlier. Even though the employer gave her a warning for a technicality and the claimant did not agree with her job was not in jeopardy.

The primary problems the claimant testified about happened on or before February 18, 2013. The evidence establishes the claimant did not forget about issues she had with Kapayou before February 18, but there were no major problems or examples of problems after February 18, 2013. However, issues the claimant experienced on or before February 18, 2013, continued to bother the claimant.

The evidence does not establish that Kapayou harassed the claimant or created a hostile work environment. The evidence does establish that the claimant continued to be bothered by incidents that happened more than six months ago. Ultimately, the claimant quit after she received a warning for an attendance issue that she did not believe was warranted. The claimant established she quit for personal reasons, but her reasons do not qualify her to receive benefits. As of November 3, 2013, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7).

Based on the decision in this case, the claimant is not legally entitled to receive benefits as of November 3, 2013. She has been overpaid \$3,264.00 in benefits she received for the weeks ending November 30, 2013, through January 18, 2014. Even though the claimant is not at fault in receiving the overpayment, she is required to pay back this amount since the employer participated at the fact-finding interview.

DECISION:

The representative's December 12, 2013 determination (reference 01) is reversed. The claimant voluntarily quit her employment for personal reasons, but these reasons do not qualify her to receive benefits. As of November 3, 2013, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid \$3,264.00 in benefits she received for the weeks ending November 30, 2013, through January 18, 2014. Even though she is not at fault in receiving the overpayment, the claimant is required to pay back this amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css