

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELINDA S STINES
Claimant

APPEAL NO: 14A-UI-08573-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/20/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 13, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 8, 2014. The claimant participated in the hearing. Bruce Bjorn, Administrator; Lori Celeski, witness/Employer Representative with Talx; and Alyce Smolsky, Employer Representative; participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the claimant voluntarily left her employment with good cause attributable to the employer and whether she is overpaid unemployment insurance benefits..

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA for Care Initiatives from October 15, 2012 to July 17, 2014. She voluntarily left her position with the employer after demanding a different schedule and refusing to finish her current schedule.

On July 17, 2014 the claimant called Administrator Bruce Bjorn and stated that would be her last day with the employer. Mr. Bjorn noted the claimant was scheduled to work from 2:00 p.m. to 10:00 p.m. that day and asked the claimant if she was going to come in to work that day and the claimant indicated she was not. The claimant also informed him she would not be working Friday, July 18, 2014 either. She then stated she only wanted to work weekends. Mr. Bjorn asked her if she could finish her scheduled shifts, which included the upcoming weekend, and he in turn would look into allowing her to only work weekends but the claimant said no. Mr. Bjorn told her if she did not finish her scheduled shifts he could not simply switch her to weekends and the claimant stated, "So you are firing me?" and Mr. Bjorn said, "No, you quit."

Two more times during the phone call the claimant asked Mr. Bjorn why she was being fired and each time he asked her if she was going to finish out her current schedule and the claimant stated she was not going to do so and Mr. Bjorn continued to explain to the claimant he was not terminating her employment but she was voluntarily quitting her job by refusing to finish her schedule.

On July 18, 2014 the claimant called Mr. Bjorn and asked him why he was firing her. Mr. Bjorn stated the claimant did not show up for work July 17, 2014 and asked the claimant if she was coming in to work July 18, 2014 and she indicated she was not. Mr. Bjorn again explained to the claimant she voluntarily quit her job. The claimant stated she only wanted to work weekends. She called two more times that week and the following week but the result was the same.

The claimant had not been reprimanded recently and her job was not in jeopardy. She was scheduled to work July 17, 18, 19, 20 and 21, 2014 from 2:00 p.m. to 10:00 p.m. The claimant was experiencing problems with her husband and he wanted her to only work weekends. The claimant also preferred to only work weekends so she could spend more time during the week with her school age children.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,596.00 since her separation from this employer.

The employer participated in the fact-finding interview personally through the statements of Talx Representative Lori Ceselki.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was hired and was scheduled as a full-time employee. While she may have wanted to change her employment status and become a part-time, weekend only employee, that decision was up to the employer to make. The claimant does not have the right to simply demand a change in her schedule, especially when she refused to finish the shifts she had already been scheduled for, both during the week and on the weekend. As the Iowa Court of Appeals stated in Brandl v. IDJS, (Unpublished, Iowa App. 1986), the employer has the right to allocate personnel in accordance with its needs and resources.

The claimant initiated the conversation about her employment status by telling the employer she was not coming in to work July 17 or July 18, 2014. She was not absent due to illness but rather because she decided she no longer wished to work during the week and only wanted to work on weekends. The employer was not opposed to working with her to find a mutually suitable schedule but expected her to first finish the schedule that was already in place. That was not an unreasonable expectation. Instead the claimant failed to show up for work July 17 through July 21, 2014. Her actions evince an intention to quit her job, especially after she spoke to Mr. Bjorn July 17, 2014, and he told her that if she failed to report for her scheduled shifts the employer would consider her to have voluntarily quit her job. While the claimant maintains her employment was terminated, the facts and evidence clearly show the claimant voluntarily quit her job and did so without good cause attributable to the employer. Under these circumstances, the administrative law judge must conclude the claimant voluntarily left her employment and has not demonstrated her leaving was due to unlawful, intolerable or detrimental working conditions as those terms are defined by Iowa law. Therefore, benefits are denied.

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 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through documents submitted and the statements of Tax Representative Lori Ceselki. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$1,596.00.

DECISION:

The August 13, 2014, reference 01, decision is reversed. The claimant voluntarily left her employment 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 received benefits but was not eligible for those benefits. Because the employer participated in the fact-finding interview the repayment of those benefits cannot be waived. The claimant is overpaid benefits in the amount of \$1,596.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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