

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ROXANE M COLE
Claimant

APPEAL NO. 19A-UI-01050-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEXTERA ENERGY DUANE ARNOLD LLC
Employer

OC: 12/30/18
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 29, 2019, reference 02, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 1, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on February 20, 2019. Claimant Roxane Cole participated. Kellen Anderson of Equifax represented the employer and presented testimony through Tim Garman and Suzanne Weatherby. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay 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: Roxane Cole began her employment at the Duane Arnold Energy Center in 1978. Ms. Cole's employment continued after NextEra purchased the nuclear power plant in 2005. Ms. Cole last performed work for NextEra Energy Duane Arnold, L.L.C. on December 31, 2018. During the last five years of the employment, Ms. Cole's title was Senior Accounting Technician. During the last two years of the employment, Lydia Hoffman, Accounts Payable Supervisor, was Ms. Cole's immediate supervisor.

In June 2018, the employer proposed to 800 retirement eligible employees that they enter into an “enhanced retirement,” early retirement agreement with the employer. Ms. Cole was one of 75 employees at the Duane Arnold Energy Center to which the employer directed the retirement proposal. Ms. Cole was 59 years old at the time and had not been contemplating retiring in the near future. Under the proposal that the employer outlined in July 2018, Ms. Cole would agree to work through the end of 2018 and would agree to separate from the employment at that time. In exchange, the employer would contribute the equivalent of one year’s salary to Ms. Cole’s pension account, would pay Ms. Cole for any accrued but unused vacation, and would allow Ms. Cole to continue to participate in the employer’s health insurance program until she was 65, so long as she paid both the employee and employer portion of the insurance premium. After the employer outlined its proposal, the employer set September 4, 2018 as the deadline by which the affected employees needed to elect or decline to accept the employer’s retirement proposal. Before the September 4, 2018 deadline, Ms. Cole accepted the employer’s retirement proposal and signed an agreement to retire at the end of 2018. Neither Ms. Hoffman nor any other employer representative placed any pressure on Ms. Cole to accept the employer’s proposal. Ms. Cole was one of 29 employees at the Duane Arnold Energy Center to accept the employer’s proposal. The employer had not announced a lay-off.

Ms. Cole’s separation from the employer and the employer’s systematic attempt to reduce its workforce through voluntary separations occurred in the context of the employer’s plan to discontinue generating power at the Duane Arnold nuclear power plant at the end of 2020. At the time the employer made the retirement proposal, the employer had more than 500 employees at the Duane Arnold nuclear power plant. The employer planned to reduce the workforce at the power plant to about 300 workers for the five to seven-year decommissioning process that would commence once the plant ceased generating power at the end of 2020. The employer announced the planned closure and decommissioning of the plant, and the above-referenced timeline, during the 45-day window the employer provided to Ms. Cole and other retirement eligible employees to accept the employer’s retirement proposal.

In June 2017, the employer had summoned Ms. Cole to a meeting at which the employer told Ms. Cole that the employer planned to relocate accounts payable operations from the employer’s various power plants to the employer’s corporate office in Florida. At that meeting, the employer notified Ms. Cole that the employer planned for the transfer of accounts payable operations to be completed during the fourth quarter of 2017. However, the employer did not transfer accounts payable operations by the end of 2017 or at any time before Ms. Cole separated from the employment. Ms. Cole continued to perform her regular duties until her employment ended at the end of 2018. After the June 2017 discussion, the employer did not again reference eliminating Ms. Cole’s position until after Ms. Cole had accepted the employer’s retirement proposal. At that time, Ms. Hoffman told Ms. Cole that the employer did not plan to replace Ms. Cole after Ms. Cole left her position.

Ms. Cole established a claim for benefits that Iowa Workforce Development deemed effective December 30, 2018. Ms. Cole has received \$2,802.00 in unemployment insurance for the six weeks between January 6, 2019 and February 16, 2019. NextEra is the sole base period employer in connection with the claim.

On January 28, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Cole’s separation from the employment. Ms. Cole participated in the fact-finding interview and provided a verbal statement that did not include intentionally misleading information. Neither NextEra nor its representative of record, Equifax, appeared for the fact-finding interview. The employer had submitted an electronic protest on

January 14, 2019. In the electronic protest, Equifax provided dates of employment, Ms. Cole's job title, and the following comment: "The claimant voluntarily quit, accepted company offer of early retirement. Additional comments: Employee accepted voluntary enhanced retirement program." The electronic protest named Tilinia Davidson of Equifax as the employer's representative and provided a telephone number where Ms. Davidson could be reached. On January 25, 2019, Equifax Unemployment Insurance Consultant Suzanne Weatherby faxed a single page document for use at the fact-finding. With regard to Ms. Cole's employment, the January 25 letter said only that, "The claimant voluntarily quit, accepted company offer of early retirement." Ms. Weather had no personal knowledge of Ms. Cole's employment and had had no contact with Ms. Cole. The January 25 letter did not state that Ms. Weatherby would represent the employer at the fact-finding interview and did not name another representative or provide a telephone number where a specific representative could be reached. Though Ms. Weatherby had planned to represent the employer at the fact-finding interview, she did not state that in her letter and did not provide a telephone number at which she could be reached for the fact-finding interview. At the time of the January 28, 2019 fact-finding interview, the Benefits Bureau deputy attempted to reach Ms. Davidson at the telephone number set forth in the January 14, 2019 protest materials. When Ms. Davidson did not answer, the deputy left a voicemail message.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

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.

A claimant who left employment to accept retirement when the claimant could have continued working is presumed to have voluntarily quit without good cause attributable to the employer. Iowa Administrative Code rule 871-24.25(24).

If a claimant voluntarily leaves employment in anticipation of a layoff in the near future, but when work is still available, is presumed to have voluntarily quit without good cause attributable to the employer. Iowa Administrative Code rule 871-24.25(29).

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Ms. Cole elected to accept an enhanced retirement package that included an agreement to leave the employment at the end of 2018. Ms. Cole could have declined the employer's retirement package offer and continued working. The employer had not announced a layoff and continued work was available, presumably through 2020. Ms. Cole is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Cole must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews 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.

Ms. Cole received \$2,802.00 in unemployment insurance for the six weeks between January 6, 2019 and February 16, 2019, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Cole received constitute an overpayment of benefits. The employer did not participate in the fact-finding interview within the meaning of the law. The employer did not have anyone appear for the fact-finding interview. The employer did not have anyone with personal knowledge of Ms. Cole's separation from the employment standing by to provide information. The cursory statements contained in the January 14 protest and the January 25 letter did not constitute "detailed factual information of the events leading to separation." Ms. Cole did not provide intentionally misleading statements at or engage in fraud in connection with the fact-finding interview. For these reasons, Ms. Cole is not required to repay the overpaid benefits. The employer's account may be charged for the overpaid benefits. However, the employer's account shall not be charged for benefits for the period beginning February 17, 2019.

DECISION:

The January 29, 2019, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective December 31, 2018. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,802.00 in unemployment insurance for the six weeks between January 6, 2019 and February 16, 2019. The claimant is not required to repay the overpaid benefits. The employer's account may be charged for the overpaid benefits. However, the employer's account shall not be charged for benefits for the period beginning February 17, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs