IOWA DEPARTMENT OF INSPECTIOSN AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU

ALYSIA M HAWKINS Claimant **A & J ENTERPRISES INC** Employer	**APPEAL 22A-UI-14710-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/05/22** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

A & J Enterprises Inc, the employer/appellant, filed an appeal from the Iowa Workforce Development's (IWD) June 21, 2022, (reference 01) unemployment insurance (UI) decision that allowed REGULAR (state) UI benefits. because of a non-disqualifying May 21, 2022 voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on September 13, 2022. The employer participated through Ashley Kearney, district manager. Ms. Hawkins participated personally. The administrative law judge took official notice of the administrative record.

ISSUE:

Did Ms. Hawkins voluntarily quit without good cause attributable to the employer?
Was Ms. Hawkins overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Hawkins began working for the employer, dba as Hardee's, on November 1, 2020. She worked as a part-time shift manager. Her employment ended on May 21, 2022.

From the beginning of her employment with this employer, Ms. Hawkins and two other co-workers – another shift manager, and the shift manager's daughter – did not get along. Ms. Hawkins had previously worked for the employer and some employees were upset when she began working for the employer again in November 2020 as a shift manager. Ms. Hawkins and Ms. Kearney are close friends and employees knew so.

Sometime in January 2022, Ms. Kearney became aware that there were issues between Ms. Hawkins and the other two co-workers. Ms. Hawkins and Ms. Kearney texted each other frequently both as friends and as employee-employer. Sometime in March 2022, Ms. Hawkins

talked with Ms. Kearney about the other shift manager and the shift manager's daughter talking about her at work. Ms. Hawkins told Ms. Kearney that the other shift manager and the shift manager's daughter would constantly make snide comments about her and call her names like "crybaby bitch" and say that Ms. Hawkins kisses Ms. Kearney's ass and gets away with anything.

Ms. Kearney offered to have the other two workers come into to work after Ms. Hawkins' shift ended. Ms. Hawkins agreed to this. However, the next schedule the employer had Ms. Hawkins scheduled to work shifts that overlapped with the other shift manager and shift manager's daughter. Also, the other shift manager and shift manager's daughter continued to talk about Ms. Hawkins.

On March 22, Ms. Hawkins' daughter and her grandson came into the restaurant. The other shift manager's daughter was working as the cook. Ms. Hawkins' daughter and the other shift manager's daughter do not get along. Ms. Hawkins' family placed an order, as did other customers. Ms. Hawkins' family order a breakfast platter during breakfast time, but there was no gravy prepared at that time. The other shift manager's daughter prepared the other customers' food but did not prepare Ms. Hawkins' family's food. Ms. Hawkins asked the other shift manager's daughter three times to prepare her family's food. The other shift manager's daughter did not prepare Ms. Hawkins' family's food.

On March 23, Ms. Hawkins gave Ms. Kearney and the general manager, who is Ms. Kearney's mother, a two-week notice of her intention to resign. Ms. Kearney suggested that Ms. Hawkins and the other shift manager work things out. Ms. Hawkins did so but she and the other shift manager continued to not get along. Ms. Hawkins also talked with the general manager who told Ms. Hawkins that she understood why Ms. Hawkins would want to resign. Ms. Hawkins decided to not resign, and she continued to work for the employer. The situation did not get better for Ms. Hawkins. The other shift manager and the other shift manager's daughter said comments like Ms. Hawkins gets away with everything because she is the friend of Ms. Kearney.

On Sunday, May 21, Ms. Hawkins worked the opening shift. Ms. Hawkins had approval from the employer to leave one hour early, and she did so. Ms. Hawkins stocked products for the next shift before she left. A few hours later, co-workers texted Ms. Hawkins and asked her why she left work early. The co-workers also sent Ms. Hawkins screen shots of social media posts in which the other shift manager and the other shift manager's daughter called Ms. Hawkins a "cry baby bitch" and said that Ms. Hawkins had not stocked for the next shift. Another co-worker called Ms. Hawkins and told her that other employees were talking about Ms. Hawkins. Ms. Hawkins sent the screenshots to the employer, stated that she could not take it anymore, and she quit. Ms. Hawkins quit because once people began talking about her on social media in her small town almost everybody in the community knew about.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Hawkins' separation from the employment was without good cause attributable to the employer.

Iowa Code section 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(37) provides:

> 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 section 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 section 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:
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> (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788.

Based on the above, Ms. Hawkins was not required to give the employer any notice regarding intolerable or detrimental working conditions prior to her quitting. However, she must prove that her working conditions were intolerable, detrimental, or unsafe. In this case, Ms. Hawkins has done that.

It is reasonable to the average person that Ms. Hawkins should not have to work in an environment where co-workers continuously made disparaging remarks about Ms. Hawkins and direct profanity/name-calling her way. The situation was bad enough that Ms. Hawkins threatened to quit in March 2022 and the general manager stated that she understood why Ms. Hawkins would want to quit. Ms. Hawkins took the reasonable step of notifying the employer about the unacceptable working conditions to give the employer reasonable opportunity to address her concerns. The employer did not take effective action to address or resolve the problem. Instead, the employer essentially told Ms. Hawkins to try to work it out and/or bear it. Ms. Hawkins has proven that her working conditions were intolerable and detrimental. The employer's lack of action to address or resolve the matter means the cause for Ms. Hawkins' quit is attributable to the employer. Benefits are allowed.

Since Ms. Hawkins is eligible for REGULAR (state) UI benefits, the issues of overpayment and repayment are moot.

DECISION:

The June 21, 2022, (reference 01) UI decision is AFFIRMED. Ms. Hawkins voluntarily left her employment with good cause attributable to the employer. Benefits are allowed.

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Daniel Zeno
Administrative Law Judge

October 11, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 or by contacting the District Court Clerk of Court https:///www.iowacourts.gov/iowa-courts/court-directory/.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 Distrit**o dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf o comunicándose con el Tribunal de Distrito Secretario del tribunal https:///www.iowacourts.gov/iowa-courts/court-directory/.

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.