

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MESSIAH JOHNSON
Claimant

APPEAL NO. 18A-UI-11367-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 10/14/18
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 November 13, 2018, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on October 11, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on December 6, 2018. Cynthia Smith represented the employer. Claimant Messiah Johnson appeared at the time of the hearing with additional witness Dariana Jones, but voluntarily terminated his participation and his witness' participation in the hearing prior to the presentation of evidence and following his profane, offensive rant. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. 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.

ISSUES:

Whether Mr. Johnson was discharged for misconduct in connection with the employment.

Whether Mr. Johnson voluntarily quit without good cause attributable to the employer.

Whether Mr. Johnson was overpaid unemployment insurance benefits.

Whether Mr. Johnson is required to 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: Messiah Johnson was employed by Pilot Travel Centers, L.L.C, as a full-time Team Member from

April 2018 until October 11, 2018, when he voluntarily quit in response to a written reprimand. Cynthia Smith, Travel Center General Manager, and Semaja McClain, Food Service Manager, were Mr. Johnson's supervisors. Mr. Johnson worked at the Travel Center in Mount Pleasant. Mr. Johnson resided in Fairfield. The commute between Fairfield and Mount Pleasant is about 25 minutes. On October 8, 2018, Mr. Johnson notified the employer that he would not be reporting for work that day because he lacked gasoline for his car. The employer had not agreed to provide transportation to Mr. Johnson. After the absence on October 8, 2018, Mr. Johnson was next scheduled to work on October 10, 2018. On October 10, Ms. McClain presented Mr. Johnson with a written reprimand concerning the absence on October 8. Mr. Johnson was next scheduled to work on October 11, from 9:00 a.m. to 5:00 p.m. On October 11, Mr. Johnson arrived for work on time, but spent the first hour of his work day calling a district or regional manager to contest the written reprimand and to ask that the reprimand be removed from his personnel record. Mr. Johnson asserted that the reprimand for absence was retaliatory in nature and tied it to a written reprimand the employer had issued for an unrelated matter a month earlier. The October 10 written reprimand was not retaliatory in nature and was based solely on the October 8 absence. On October 11, when the district/regional manager refused the request to rescind the October 10 written reprimand, Mr. Johnson told the district/regional manager that he did not need "the fucking job" any more. Mr. Johnson then walked off the job at 10:00 a.m. Mr. Johnson did not return. The district/regional manager promptly notified Ms. Smith of his telephone conversation with Mr. Johnson.

Mr. Johnson established an original claim for unemployment insurance benefits that was effective October 14, 2018. Iowa Workforce Development set Mr. Johnson's weekly benefit amount at \$157.00. Mr. Johnson received \$157.00 in weekly benefits for the weeks that ended October 20, October 27, November 3 and November 24, 2018. The total amount of benefits disbursed to Mr. Johnson was \$628.00. Pilot Travel Centers, L.L.C. is a base period employer in connection with the claim.

On November 9, 2018, an Iowa Workforce Development Benefits Bureau deputy held a scheduled fact-finding interview to address Mr. Johnson's separation from the employment. The deputy attempted to reach the employer's named representative of record, Ryan Powell of Thomas & Company at the telephone number the employer's representative had provided for that purpose. When the employer representative did not answer, the deputy left a voicemail message for Mr. Powell. The deputy was also unable to reach Mr. Johnson at his telephone number of record and left a voicemail message for Mr. Johnson. On October 29, 2018, Thomas & Company had submitted an electronic protest on behalf of the employer. In the protest, the employer representative provided dates of employment and described the separation thus: "The claimant was discharged due to excessive attendance issues. Please see the attached paf [sic]." The attached materials consisted of the October 10, 2018 written reprimand and Ms. Smith's October 11 documentation of the October 11 separation. These same two documents were received into evidence at the time of the appeal hearing as Exhibits 1 and 2. The October 11 documentation included the following narrative:

Messiah showed up this morning, spent some time on the phone talking to Scott over his concerns with being written up yesterday 10/10 for an attendance on 10/8. He asked that the write up be removed from his file, and he was told it would not be removed. He said he felt like he was being retaliated against because of being written up for misconduct in September. This had nothing to do with retaliation and solely was because he violated company policy. When the outcome wasn't what he wanted to hear, he walked out.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). 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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

The evidence in the record establishes an October 11, 2018 voluntary quit without good cause attributable to the employer in response to the written reprimand issued on October 10 and in response to the employer's refusal to rescind the reprimand. The evidence in the record establishes that the October 10 written reprimand was based solely on Mr. Johnson's unexcused absence on October 8, when Mr. Johnson was absent due to a lack of gasoline, a matter of personal responsibility. Mr. Johnson was upset by the written reprimand, erroneously asserted that the reprimand was retaliatory in nature, and elected to voluntarily separate from the employment. Mr. Johnson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Johnson 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).

Mr. Johnson received \$628.00 in benefits for four weeks between October 14, 2018 and November 24, 2018, but this decision disqualifies him for those benefits. Accordingly, the benefits Mr. Johnson received constitute an overpayment of benefits.

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.

Neither the employer nor the employer's representative got on the phone with the deputy on November 9, 2018 to provide an oral statement to the deputy. However, the two exhibits the employer submitted as part of its protest contained detailed factual information of the quantity and quality that, if unrebutted, would be sufficient to result in a decision favorable to the employer. The October 11 documentation spelled out what had taken place that day and clearly indicated that the claimant had walked off the job in response to a reprimand. That documentation was sufficient to satisfy the participation requirement.

Because the employer participated in the fact-finding interview, Mr. Johnson is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The November 13, 2018, reference 03, decision is reversed. The claimant voluntarily quit the employment on October 11, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$628.00 in benefits for four weeks between October 14, 2018 and November 24, 2018. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs