

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEWELL JONES**  
Claimant

**APPEAL NO: 18A-UI-08674-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUMACH LLC**  
Employer

**OC: 07/15/18**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 7, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 5, 2018. The claimant participated personally. The employer participated through Jennifer (Jenni) Grocholski, supervisor. Jenni Bauer, human resources generalist, also testified. Employer Exhibit 1 was admitted.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a member relations specialist and was separated from employment on July 9, 2018, due to job abandonment after three no-call/no-shows.

The employer has a written policy which requires employees notify the employer before half of their shift is over. The employer also allows employees to email the employer if needed to alert of an absence. In addition, the employer's attendance policy states three individual or consecutive no-call/no-shows will result in separation due to job abandonment. The claimant was provided access to the employer's policies upon hire. Prior to separation, the claimant had

no formal discipline for attendance but had been informally coached for a miscommunication resulting in a no-call/no-show on March 24, 2018.

The claimant last performed work on June 15, 2018. At that time, the claimant worked 9:00-5:00 p.m. shifts on Sunday, Monday, Wednesday, Thursday and Friday. She was also approved for intermittent FMLA to care for a parent.

On June 16 and 17, 2018, the claimant properly reported her absences and requested to use FMLA. On June 20, 21, 22, 24, 25, 27, 28, and 29, 2018, the claimant properly reported her absences, stating she was sick. The claimant was offered an application for FMLA. The claimant's grandmother then passed away. On June 28, 2018, the employer contacted the claimant via email, requesting an update of the claimant's plans to return to work, requested supporting documentation to be provided by July 3, 2018 and stated if the claimant was requesting bereavement, to let the employer know (Employer Exhibit 1). On July 1 and 2, 2018, the claimant reported her absences, citing she was "out."

The claimant reportedly visited a doctor on July 2, 2018 and provided FMLA paperwork to be completed. The paperwork was never received by the employer. On Tuesday, July 3, 2018, at 5:35 a.m., the claimant emailed the employer, stating she intended to submit FMLA paperwork, and that she was going to her doctor. The email stated "if she gives me the okay to perform regular duties, I'll be traveling to be with family and attend the funeral this weekend. If I'm given the okay to travel for the funeral this means I will not be returning to work until Wednesday the 11th. I will call after my appointment this Wednesday to update" (Employer Exhibit 1).

At 10:46 a.m. on July 3, 2018, the employer responded, stating it did not have any attached documentation and to please resend it and needing to know if the claimant intended to request bereavement (Employer Exhibit 1). The claimant did not confirm documentation was sent or resent. She also did not call the employer as she stated she would in her prior email.

According to the claimant, she had a 2:00 p.m. doctor's appointment, was given approval to travel and then immediately drove to the airport to fly to Alexandria, Louisiana for her grandmother's funeral. The funeral was July 6, 2018 and the claimant remained in Louisiana until July 11, 2018. She did not contact the employer and reportedly did not check her email again until July 11, 2018. Had the claimant retrieved the email, she would have seen the July 3, 2018 email from the employer. She would have also seen the July 9, 2018 email that stated due to having no contact July 5, 6, and 8th with the employer, that she had voluntarily abandoned her job as a result of the no-call/no-shows (Employer Exhibit 1).

The claimant also did not return to work on July 11, 2018, as she indicated she would if she attended the funeral. The claimant indicated she had misspoke in the email and meant she would be back to town, not work, on July 11, 2018. The claimant did not attempt to return to work upon seeing the July 3 and 9, 2018 emails. She was upset but did not take any steps to resolve any miscommunication or preserve employment. She attempted to call the employer but could not reach anyone and did not reply to either email from the employer until July 15, 2018 (See fact-finding documents/administrative record).

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,842.00, since filing a claim with an effective date of July 15, 2018. The administrative record also establishes that the employer did participate in the August 3, 2018, fact-finding interview or make a witness with direct knowledge available for rebuttal. Jennifer (Jenni) Grocholski, supervisor and Jenni Bauer, human resources generalist, participated.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are denied.

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(4), and Iowa Admin. Code r. 871-24.25(20), and Iowa Admin. Code r. 871-24.25(27) provide:

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer. 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 871 IAC 24.25. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

The undisputed evidence is the claimant last performed work on June 15, 2018 and was separated from employment on July 9, 2018, three and a half weeks later. The administrative law judge recognizes the claimant was balancing family needs at home and her job

responsibilities. The employer was also working with the claimant to allow her to preserve employment (Employer Exhibit 1). The employer reasonably requested an update from the claimant on June 28, 2018, after she had missed approximately two weeks' work and upon learning the claimant's grandmother had passed away, and asked the claimant to clarify if she needed bereavement as well (Employer Exhibit 1).

The claimant then sent an email at 5:35 a.m. on July 3, 2018 and discontinued reporting to the employer (Employer Exhibit 1). She did not furnish the requested documentation to support her absences, she did not request permission for bereavement leave, she did not follow up with the employer after her July 3rd doctor's appointment as she stated she would, nor did she return to work on July 11, 2018, as she stated in her email.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. It is the claimant's responsibility to provide requested information to her employer to support continued absences. The claimant failed to maintain reasonable contact with the employer to support her continued absences and preserve employment. In this case, the claimant discontinued reporting to work from July 3 through July 11, 2018 even though the employer requested information from her. Further, if the claimant truly had submitted medical documentation that was not received or to return to work, she failed to make any good faith efforts to return when she read the employer's July 3 and 9, 2018 emails.

The administrative law judge is not persuaded the claimant intended to return to work after July 11, 2018 based upon her actions. Therefore, based on the evidence presented, the administrative law judge concludes the decision to quit may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are withheld.

**The next issue to resolve is whether the claimant must repay the 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 section 96.3(7)a, b.

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 claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits in the amount of \$2,842.00. The employer satisfactorily participated in the scheduled fact-finding interview by way of Jenni Bauer and Jennifer Grocholski.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The August 7, 2018, (reference 01) decision is reversed. The claimant voluntarily quit the 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 been overpaid benefits in the amount of \$2,842.00 and is required to repay the benefits. The employer is relieved of charges.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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