

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY R WHITE
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL NO. 24A-UI-01102-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/03/23
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

On January 26, 2024, the employer filed a timely appeal from the January 16, 2024 (reference 05) decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on August 21, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on February 19, 2024. Amy White (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Clint Martin represented the employer. Exhibits 1 through 4 were into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determination whether the employer participated and if not, whether the claimant engaged in willful misrepresentation of material facts in connection with the fact-finding interview.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.
Whether the claimant was overpaid benefits.
Whether the claimant must 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:

Amy White (claimant) was employed by Remedy Intelligent Staffing, Inc. during two distinct periods. The most recent period of employment began in July 2023, when the claimant commenced her second assignment at GXO. The assignment was full-time, temp-to-hire. The claimant worked as a Customer Service Representative. The claimant's duties included processing customer orders, troubleshooting order issues including order modifications in coordination with warehouse employees, and reviewing shipping and receiving receipts. The

work hours were 3:30 p.m. to midnight, Monday through Friday. Tara Parrish, Warehouse Office Manager, was the claimant's supervisor in the assignment.

The claimant last performed work in the assignment on Wednesday, August 16, 2023 and completed her shift that day.

The claimant did not complete the GXO assignment.

The claimant was next scheduled to work on Thursday, August 17, 2023. On that day, the claimant gave notice that she would be 10 minutes late, but then did not report for her shift.

The claimant had Friday, August 18, 2023 as an approved day off.

The claimant was next scheduled to work on Monday, August 21, 2023, but did not appear for work that day. When the claimant did not appear for work, Clint Martin, the Remedy franchise owner, sent a text message to inquire about the absence. The claimant responded by text message as follows:

Hi Clint

I called in Thursday because I was out of town dealing with family issues and I had Friday approved to be off

However I no longer want to work at GXO because they have told a previous employee who reached out to me via text tell[ing] me about my attendance and tell[ing] me about the way I dress which was never discussed with me; I also haven't changed how I dress from the first time I worked for them I don't think it's right for them to tell previous employees anything I do at GXO

I'm still available for other jobs I just don't think GXO is a good fit for me.

After Mr. Martin received the claimant's text message, he contacted Ms. Parrish. When Mr. Martin spoke to Ms. Parrish regarding the claimant's allegation that someone other than Ms. Parrish had spoken to her about her attendance and attire, Ms. Parrish agreed that it would not be appropriate for someone other than Ms. Parrish to address such concerns with the claimant. Ms. Parrish added that the claimant had reported for work in "skimpy" attire.

In response to the claimant's text indicating a refusal to return to GXO, Mr. Martin responded that he deemed Ms. Martin to have quit the assignment without the required 48 hours' notice, that this was the second time the claimant had left an assignment without appropriate notice, and that the employer was therefore unwilling to place the claimant in additional assignments.

If the claimant has been willing to continue in the GXO assignment, Remedy and GXO would have continued to have work for the claimant in that assignment.

The claimant established an original claim for benefits that was effective December 3, 2023. IWD set the weekly benefit amount at \$304.00. The claimant received \$608.00 benefits for two weeks between December 17 and 30, 2023. Remedy Intelligent Staffing, Inc. is a base period employer.

On January 12, 2024, Iowa Workforce Development Benefits Bureau held a fact-finding interview that addressed the claimant's separation from the employer. IWD mailed notice of the fact-finding interview to the parties on January 5, 2024. The employer's notice went to the employer's third-party representative, Equifax/Talx. The claimant did not answer IWD's call and did not participate. The employer's third-party representative, Equifax, did not answer IWD first

call, but an Equifax agent answered the second and referred the IWD representative to the December 27, 2023 SIDES protest materials without providing a verbal statement regarding the claimant's separation from the employment. The SIDES protest materials included attached documents that employer later resubmitted for the appeal hearing as proposed Exhibits 1 through 4. The SIDES protest provided dates of employment and a brief narrative in a question and answer format. The SIDES narrative indicated the claimant had voluntarily quit due to job dissatisfaction and that the claimant did not provide a written resignation. The SIDES narrative stated that the claimant's job was in jeopardy, that the employer had made no promises to the claimant that went unfulfilled, and that the claimant would not be considered for future assignments. The SIDES narrative stated that the claimant quit without notice and that the claimant had signed to acknowledge that failure to contact the employer at end of an assignment would be considered a voluntary quit. The SIDES narrative stated that the claimant claimed to have called off for work on August 17, 2023, but that the employer had no record of contact from the employee other than notice sent at 3:17 p.m. indicating she would be late, and that the claimant never showed up.

REASONING AND CONCLUSIONS OF LAW:

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.

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 871 IAC 24.25.

When a claimant left work due to dissatisfaction with the work environment, the claimant is presumed to have voluntarily quit without good cause attributable to the employer. See Iowa Admin. Code rule 87124.25(21).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 87124.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record indicates that claimant voluntarily quit the GXO assignment, and the Remedy employment, effective August 21, 2023. Through her text message to the employer, the claimant provided a written resignation from the GXO assignment. The claimant had concerns about aspects of the assignment but has presented no evidence to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the assignment. We do not know the identity of the mystery person the claimant alleges in her text message to the employer spoke to her about the assignment.

Under the circumstances, the claimant's decision to leave the assignment prior to completion of the assignment amounted to a voluntary quit from the employment, as the assignment represented the established conditions of the employment and the claimant communicated she was unwilling to continue in the established conditions of the employment. The employer was not obligated to acquiesce in the claimant's decision to unilaterally change the established conditions of the employment. Based on the August 21, 2024 voluntary separation from the employment, 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 received \$608.00 in benefits for two weeks between December 17, 2023 and December 30, 2023, but this decision disqualifies the claimant for those benefits. Accordingly, the benefits the claimant received are an overpayment of benefits.

Iowa Code section 96.3(7) provides in relevant part as follows:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)

(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Administrative Code rule 87124.10(1) and (4), regarding employer participation in fact-finding interviews, provides 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.

...
(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.

The employer did not participate in the January 12, 2024 fact-finding interview within the meaning of the law. The employer received appropriate notice of the fact-finding interview pursuant to the notice mailed to the employer's representative of record. No one with personal knowledge of the claimant's employment and separation from the employment participated on behalf of the employer in the fact-finding interview. Nor did the employer or Equifax/Talx supply for the fact-finding interview the name and phone number where such person with personal knowledge might be reached. Neither the employer nor its third-party representative provided a verbal statement to the IWD deputy. The documentation the employer submitted for the fact-finding interview fell short of satisfying the participation requirement. The employer documents attached to the protest included the availability policy, the Attendance & Premium Pay Policy, a Conditional Offer of Employment, and a poor print quality, ostensibly undated document of uncertain origin or consequence. The narrative supplied by Equifax/Talx on the SIDES protest was hearsay within hearsay and did not satisfy the preponderance of the evidence burden of proving a disqualifying separation.

Based on the employer's failure to participate in the fact-finding interview, and the absence of willful misrepresentation by the claimant at the fact-finding interview, the claimant is not required to repay the overpaid benefits. The overpaid benefits may be assessed to the employer's account. However, the employer's account will be relieved of charge for benefits for the period beginning December 31, 2023.

DECISION:

The January 16, 2024 (reference 05) decision is REVERSED. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective August 21, 2023. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$608.00 in benefits for two weeks between December 17, 2023 and December 30, 2023. The claimant is not required to repay the overpaid benefits. The overpaid benefits may be charged to the employer's account. However, the employer's account will not be charged for benefits for the period beginning December 31, 2023.



James E. Timberland
Administrative Law Judge

February 26, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the 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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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>.

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.