

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

**DUSTIN W ALLEN**  
Claimant

**CITY OF DUBUQUE**  
Employer

**APPEAL NO. 24A-UI-02957-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/18/24**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

On March 15, 2024, the employer filed a timely appeal from the March 11, 2024 (reference 01) 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 the claimant was discharged on February 8, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on April 8, 2024. Dustin Allen (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. Connie Palm represented the employer and presented additional testimony through Lt. Richard Fullmer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO and KFFV. The administrative law judge took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation.

**ISSUES:**

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or 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:

Dustin Allen (claimant) was employed by the City of Dubuque as a full-time police officer until February 9, 2024, when he voluntarily quit the employment. In July 2023, Mr. Allen entered into a contract with the employer whereby the employer sponsored Mr. Allen's participation in the Iowa Law Enforcement Academy (ILEA) in anticipation of Mr. Allen becoming a member of the City of Dubuque Police Department upon graduation from the ILEA. Mr. Allen graduated from the ILEA. As of February 7, 2024, Mr. Allen was several weeks into a 20-week field training. As

part of new officer training, the employer has new officers meet monthly with a psychologist for support in adjusting to the stress inherent in police work. The employer also has in place a peer support network to assist police officers in dealing with stressful and/or traumatic events that can occur in the course of the employment.

On February 7, 2024, Mr. Allen sent a letter to the employer indicating he had determined police work was not for him. The letter on its face stops short of stating the claimant is resigning from the employment. The letter states, "I only recently realized that I hate to give someone a ticket, take someone to jail or even just show up to a call to sort out someone's problems." The letter stated that the work schedule reduced Mr. Allen's time with his family and friends. The letter stated that Mr. Allen had been meeting with a psychologist and through that contact had arrived at the conclusion that he needed to remove himself from police work.

On February 6, 2024, Mr. Allen was involved in a traumatic service call wherein a motorist committed suicide. In connection with that incident the employer made peer support available to Mr. Allen. Mr. Allen found the peer support inadequate.

The employer met with Mr. Allen on February 7, 2024. During that meeting, Mr. Allen affirmed he had decided to leave the police officer position. Mr. Allen requested to move into a non-policing position, such as dispatcher. The employer advised that such work was in a different department, that it would not be possible to transfer to a dispatch position, and that the claimant would instead have to apply for such a position. The employer attempted to dissuade Mr. Allen from leaving the employment. The employer elected to have Mr. Allen take a paid sick day on February 8, 2024 and meet further with the employer on February 9, 2024.

On February 9, 2024, Mr. Allen reaffirmed his decision to leave the police officer employment effective immediately. Mr. Allen stated that his letter should be treated as a resignation letter. The employer discussed with the claimant the contract under which Mr. Allen would be obligated to reimburse the employer for the ILEA program expense if he voluntarily left less than four years into the employment. Ms. Allen acknowledged the obligation, but reaffirmed his decision to immediately voluntarily separate from the employment. At the time of the separation, the employer continued to have work available for Mr. Allen as a police officer.

Mr. Allen established an original claim for benefits that was effective February 18, 2024 and received \$1,878.00 in benefits for three weeks between February 18, 2024 and March 9, 2024. The City of Dubuque is a base period employer in connection with the claim.

On March 7, 2024, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Allen's separation from the employment. Connie Palm, Benefits and Compensation Manager, represented the employer at the fact-finding interview.

#### **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 87124.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 87124.1(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 87124.25. A 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. See Iowa Admin. Code rule 871-24.25(37).

The evidence establishes that the claimant voluntarily quit and was not discharged from the employment. The employer had ongoing work for the claimant as a police officer. The employer attempted to dissuade the claimant from leaving the employment. The claimant repeatedly affirmed his decision to immediately leave the police officer employment. On February 9, 2024, the employer accepted the claimant's resignation.

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.

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 1 (Iowa 2005).

The evidence in the record established a voluntary quit without good cause attributable to the employer. The claimant quit because he decided the employment was not a good fit. The employer had in no manner misrepresented the employment. A reasonable person seeking employment as a police officer would anticipate the work would come with inherent stressors and potentially traumatic interactions or experiences. The employer offered multi-faceted, profession-appropriate support to assist the claimant in dealing with such stressors. This included access to a psychologist, peer-support, and approved time off. The February 6, 2024 service call did not constitute an intolerable and/or detrimental work condition, given the nature of the employment and profession, and would not have prompted a reasonable person to leave the employment. The claimant voluntarily quit the employment for personal reasons, after deciding the employment was not a good fit. 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.

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. ...

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.

The claimant received \$1,878.00 in benefits for three weeks between February 18, 2024 and March 9, 2024, but this decision disqualifies the claimant for those benefits. The benefits the claimant received are an overpayment of benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid benefits. The employer's account is relieved of charges, including charges for benefits already paid to the claimant.

**DECISION:**

The March 11, 2024 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment on February 9, 2024 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,878.00 in benefits for three weeks between February 18, 2024 and March 9, 2024. The claimant is required to repay the overpaid benefits. The employer's account is relieved of charges, including charges for benefits already paid to the claimant.



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James E. Timberland  
Administrative Law Judge

April 16, 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](http://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](http://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.