

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN COENEN
Claimant

APPEAL NO: 16A-UI-09685-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE SIDING DOCTOR LLC
Employer

OC: 01/17/16
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 29, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 22, 2016. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Norman Peterson, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time siding and window installer for The Siding Doctor LLC. from June 29, 2006 to August 2, 2016. The claimant voluntarily left his employment after calling the employer to complain about a co-worker August 2, 2016.

The claimant and his co-worker “Don” were on the job site together August 2, 2016. The claimant and Don did not get along very well and while the claimant was taking his time because he was working with live wires, Don asked him why it was taking him so long. The claimant “blew up” at Don and left the work site. He called Owner Norman Peterson and said he was quitting his job. After listening to the claimant’s account of the incident Mr. Peterson asked the claimant if he wanted to return and work things out with Don with Mr. Peterson’s assistance and the claimant said, “No. I quit.” Mr. Peterson had mediated issues between the two men on at least two other occasions during the claimant’s employment.

Additionally, Mr. Peterson stated he and Don questioned the claimant about the number of medical appointments he said he had and both had concerns about the claimant’s attendance as he often arrived late and left early. Until the spring of 2016 the claimant did not have a

driver's license and Don picked him up for work and took him home which resulted in the claimant being on time and not leaving early. When the claimant regained his license he began driving himself and was frequently late and left early. At least once per week the claimant told Don and the employer he had a medical appointment. The employer did not mind accommodating some medical appointments but the claimant also would leave work to pick up his prescriptions instead of doing that during his lunch break or after work and was frequently gone. The claimant's absences created a hardship for the employer because Don and the claimant were Mr. Peterson's only employees. Mr. Peterson believes that situation also played a role in the claimant's decision to quit.

The claimant has claimed unemployment insurance benefits in the amount of \$1,355.00 for the five weeks ending September 17, 2016.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The claimant was understandably taking his time working with live wires. Because it was taking longer than usual for the claimant to perform that task, however, Don simply asked him why it was taking him so long and the claimant "blew up" and voluntarily quit his job. There had been friction between the claimant and Don before and the employer was able to smooth over their differences in the past but when he offered to do so on this occasion the claimant refused and chose not to return to work.

The claimant may also have been angry because the employer and Don were beginning to question the number and frequency of medical appointments the claimant was stating he had and the fact he often arrived late and left early since getting his license back in the spring of 2016. He also routinely left the job site to go pick up prescriptions, a task that could have been accomplished either during a lunch break or after work.

Neither of the situations described above involving the incident with Don August 2, 2016, nor the employer being suspicious and questioning the claimant about his attendance and medical

appointments, rises to the level of good cause for the claimant leaving his job. The claimant has not demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

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 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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. There is no evidence the claimant received benefits due to fraud or willful misrepresentation. The employer failed to participate in the fact-finding interview personally or through written documents within the meaning of the law. Consequently, the claimant’s overpayment of benefits to date, in the amount of \$1,355.00 for the five weeks ending September 17, 2016, is waived as to the claimant and must be attributed to the employer’s account.

DECISION:

The August 29, 2016, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was

not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits to date, in the amount of \$1,355.00 for the five weeks ending September 17, 2016, is waived as to the claimant and must be attributed to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs