

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMMA M BARNES

Claimant

APPEAL 22A-UI-03650-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

OC: 01/02/22

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

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:

On January 31, 2022, Target Corporation (employer/appellant) filed an appeal from the Iowa Workforce Development decision dated January 19, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding claimant's December 20, 2021 separation from employment was not disqualifying.

A telephone hearing was held on March 10, 2022. The parties were properly notified of the hearing. Employer participated by Cedar Falls Store Director Larry Dunn. Emma Barnes (claimant/respondent) did not appear for the hearing or participate.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a part-time guest advocate. Claimant's first day of employment was August 7, 2018. The last day claimant worked on the job was December 21, 2021. Claimant's immediate supervisor was Team Leader Barbara Gustafson. Claimant was terminated from employment on December 31, 2021, due to job abandonment.

Claimant was absent without notice on December 22, 23, 26, 28, 29, and 30, 2021. Claimant was initially absent due to a funeral and subsequently because she was moving to Iowa City and intended to work at employer's store there beginning in January. However, claimant did not receive approval for the time off due to the funeral and was never transferred to the Iowa City store. Claimant did request a transfer in November and it was agreed to in principle but never formalized.

Claimant was aware she was scheduled to continue working at the Cedar Falls store but did not properly address with management that she was unable or unavailable for work on those days. Schedules are posted two weeks in advance and available through a mobile app. Claimant contacted the Iowa City store in early January 2022 about working there and was informed she had been terminated due to job abandonment.

Employer has a policy in its team member handbook which provides that three consecutive no-call, no-show absences is considered a voluntary termination of employment. This policy was readily available to claimant.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$289.00 for a total of three weeks, beginning the week of January 8, 2022 and continuing through the benefit week ending January 22, 2022. The total amount of benefits paid to date is \$867.00.

Employer's representative did not receive notice of a fact-finding interview prior to the interview taking place. At that time the employer's representative was only able to refer the fact-finder to employer's SIDES response. The SIDES response indicated claimant resigned without reason but offered little other information regarding the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated January 19, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding claimant's December 20, 2021 separation from employment was not disqualifying is REVERSED.

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 provides in relevant part:

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:

- (2) The claimant moved to a different locality.
- (3) The claimant left to seek other employment but did not secure employment.
- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"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 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant was aware she was still scheduled at the Cedar Falls store and did not address that with management, appear for the shifts, or call in to report that she would be absent. She simply assumed she would be transferred to the Iowa City store, which had not been formalized prior to her leaving the Cedar Falls store. Claimant abandoned her position at the Cedar Falls store to move to a different locality and seek continued work with employer there but was not brought on because of abandoning the prior position. Claimant's leaving of the Cedar Falls position was voluntary and not with good cause attributable to employer. She is therefore disqualified from benefits effective with the date of separation.

- I. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

- 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.

(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 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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$289.00 for a total of three weeks, beginning the week of January 8, 2022 and continuing through the benefit week ending January 22, 2022. The total amount of benefits paid to date is \$867.00. Because the administrative law judge now finds claimant was disqualified from benefits during that period, she has been overpaid in the amount of \$867.00.

Because employer did not participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant. However, neither shall employer be charged for benefits paid, as it did

not receive proper notice and therefore did not have a reasonable opportunity to participate in the fact-finding interview. The overpayment shall therefore be charged to the unemployment insurance fund.

DECISION:

The decision dated January 19, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding claimant's December 20, 2021 separation from employment was not disqualifying is REVERSED. The separation from employment was disqualifying. The disqualification will continue until claimant has earned wages for insured work equal to ten times her weekly benefit amount.

Claimant was overpaid benefits in the amount of \$867.00. Benefits shall not be recovered and employer shall not be charged. The overpayment will be charged to the unemployment insurance fund.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 18, 2022
Decision Dated and Mailed

abd/abd