

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER JONES
Claimant

APPEAL NO: 17A-UI-11206-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FUTURE LINE LLC
Employer

OC: 10/01/17
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 October 25, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 29, 2017. The claimant did not respond to the hearing notice and did not participate in the hearing or request a second postponement as required by the hearing notice. Brett Wilson, Owner, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her 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 outside sales person for Future Line LLC from February 13, 2017 to September 25, 2017. She voluntarily left her employment by returning her company car, cell phone and credit card.

On September 20, 2017, Owner Brett Wilson sent the claimant a text message at 10:34 a.m. because he had not heard from her all week and he also wanted her call reports which detail who she saw and when each day. The claimant responded with a text message at 6:19 p.m. stating she left her phone in her husband's truck and that she had been working with the City of Hedrick, Iowa (Employer's Exhibit One). Before 8:00 a.m. September 21, 2017, the employer received a text from an individual purporting to be the claimant's neighbor from the claimant's phone stating she broke her wrist (Employer's Exhibit One). Later that day Mr. Wilson asked Outside Sales Manager Dan Wiley to call the City of Hedrick to see if the claimant had been there on a sales call and the city clerk and public works director stated they did not see her September 20, 2017 and she had not been there in over two months. Mr. Wilson texted the claimant at 1:09 p.m. asking what her status was and stating they needed to talk about her job (Employer's Exhibit One). The claimant did not respond. On September 22, 2017, the claimant

did not call or text the employer and did not report for work. At the end of the day the employer cancelled the claimant's company credit card because it did not know her status. On September 25, 2017, at 9:01 a.m. the claimant texted Mr. Wiley and stated, "Car is sitting in my driveway with the key in it" with the credit card and cell phone (Employer's Exhibit One). Consequently, the employer determined the claimant quit her job.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,792.00 for the eight weeks ending November 25, 2017.

The employer personally participated in the fact-finding interview through the statements of Owner Brett Wilson.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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.

The claimant failed to maintain contact with the employer after the employer learned the claimant was not honest about being in Hedrick, Iowa, September 20, 2017. While the claimant may have broken her wrist, the employer never heard that from the claimant and did not receive any doctor's note to that effect. The claimant then told Mr. Wiley her company car was in the driveway with the key and her company cell phone and credit card. That action evinced an intention to voluntarily quit and the employer reasonably concluded the claimant chose not to return to her job. The claimant has not provided any evidence demonstrating that her 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 un rebutted 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 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.

The employer participated in the fact-finding interview personally through the statements of Owner Brett Wilson. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$2,792.00 for the eight weeks ending November 25, 2017.

DECISION:

The October 25, 2017, reference 02, decision is reversed. The claimant voluntarily left her 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 received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$2,792.00 for the eight weeks ending November 25, 2017.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn