

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN E HOFFMAN
Claimant

APPEAL NO: 14A-UI-01155-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECIOUS MEMORIES
Employer

OC: 12/29/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 23, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated at the February 20 hearing. Teresa Coenen, the owner, and Nancy Cook, an employee, participated in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits she has received.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer in June 2012. She usually worked two to three days a week. When the claimant returned from a quilt show in August 2013, she made comments that she wanted to go to a show in Phoenix in early February. Although employees did not record time off they wanted in January and February 2014, Coenen and Cook reminded the claimant in August that the claimant would have to cover for everyone the first week of February because everyone else would be gone. In late November 2013, Cook overheard the claimant tell a customer that she had wanted to go to the quilt show in early February but could not.

In late November or early December, the claimant's husband bought airline tickets for Phoenix so they could visit their daughter and the claimant could go to the quilt show. The claimant did not immediately let Coenen know about the tickets her husband purchased. On December 17, the claimant wrote on the scheduling calendar that she could not work the first week of

February. On December 18, Coenen reminded the claimant that she had been told in August she could not have this time off. The claimant explained that her husband bought the tickets without her knowledge and she would check to see if the flying dates could be changed.

On December 20, the claimant sent Coenen a text that the airline tickets could not be changed and she could not work more than two or three days a week and not more than ten days a month so she could lose her social security disability benefits. In December 2013, the claimant had just been granted these benefits. Coenen responded by letting the claimant know they needed to talk. The claimant worked as scheduled on December 21, but Coenen was not at work. The claimant then became ill and was unable to work her scheduled shifts between December 25 and January 1. The claimant came to the store on January 2 to talk to Coenen.

On January 2, Coenen told the claimant that if the claimant would not work the first week in February, the store would have to close. The employer also told the claimant that if she changed her mind about working the first week in February, she would be put on the schedule, but if she would not work the first week of February she would not be scheduled to work. When the claimant did not indicate she would work the first week in February, Coenen asked for her store keys. Even though the employer hired a part-time employee who began on January 2, the store was closed the first week of February because the employer did not have any experienced or knowledgeable employee to manage the store that week.

The claimant established a claim for benefits during the week of December 29, 2013. She filed claims for the weeks ending January 4 through February 22, 2014. She received her maximum weekly benefit amount of \$128 for each week. The employer was not called for the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When the employer gave the claimant a choice of working the first week of February and being scheduled to work and the claimant chose to take the first week of February off even though the employer had denied this time off months earlier, the claimant initiated her employment separation. The claimant's refusal to work during the week the employer had denied her time off amounts to voluntarily quitting her employment. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The claimant's failure to immediately inform Coenen her husband bought airplane tickets that required her to be gone the first week of February suggests the claimant knew the employer would not change her mind and grant her this time off. The claimant quit when she decided she would not work the first week in February after the employer had denied this time off months earlier. As of December 29, 2013, the claimant is not qualified to receive benefits.

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 § 96.3(7)a, -b.

Since the claimant is not qualified to receive benefits as of December 29, 2013, she has been overpaid \$1024 in benefits she received for the weeks ending January 4 through February 22, 2014.

The issue of whether the employer or claimant is charged for the overpayment will be remanded to the Claims Bureau to determine. The employer asserted no one called the employer. Since the fact-finding notes were not available at the time of the hearing, it is not known if attempts were made or what information the Claims Specialist had when making the determination.

DECISION:

The representative's January 23, 2014 determination (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 29, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The claimant has been overpaid \$1024 in benefits she received for the weeks ending January 4 through February 22, 2014.

The issues of whether the employer participated in the fact-finding interview and whether the claimant or the employer is liable for paying back the overpayment is **Remanded** to the Claims Bureau to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs