

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA C HILL
Claimant

HUMACH LLC
Employer

APPEAL 17R-UI-10517-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/02/17
Claimant: Respondent (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
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:

Humach, LLC (employer) filed an appeal from the July 21, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Jessica C. Hill (claimant) voluntarily quit her employment for good personal reasons. Hearing notices were mailed to the parties' last address of record about a telephone hearing scheduled for September 1, 2017. The claimant had moved and did not receive the hearing notice. The employer who appealed the decision participated. The administrative law judge issued a decision in appeal 17A-UI-08290-NM-T finding that the employer's appeal was timely, the claimant did not voluntarily quit her employment with good cause attributable to the employer, and that she had been overpaid unemployment insurance benefits which she would have to repay.

The claimant appealed the decision to the Employment Appeal Board (EAB) who remanded the case for a new hearing as the claimant did not have a chance to participate and exercise her right to due process. The EAB did not vacate the prior decision. However, after the new hearing was held, any decision that followed would vacate the prior decision.

After proper notice was given to the parties, a telephone hearing was held on November 1, 2017. The claimant participated personally. The employer participated through Human Resource Generalist Jenni Bauer and Supervisor Kelly Schmitt. Employer's Exhibit 1 was admitted without objection. Department's Exhibit D-1 was admitted without objection.

ISSUES:

Is the appeal timely?
Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Product Associate beginning on July 25, 2016, and was separated from employment on June 14, 2017, when she quit. On June 8, 2017, the last day the claimant worked, she notified Supervisor Kelly Schmitt that she might need to relocate due to a domestic abuse situation. On June 14, 2017, the claimant notified Schmitt that she would need to relocate for the safety of her and her children. The claimant then moved to another state.

The unemployment insurance decision allowing the claimant to receive benefits was mailed to the appellant's address of record on July 21, 2017. The decision in the administrative record states an appeal must be filed by July 31, 2017. However, the employer has provided documentation that the decision it received states an appeal needed to be filed by August 4, 2017. (Employer's Exhibit 1.) The employer filed its appeal on August 4, 2017. (Department's Exhibit D-1).

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,144.00, since filing a claim with an effective date of July 2, 2017, for the eight weeks ending August 26, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is timely, the claimant's separation from the employment was without good cause attributable to the employer, and the claimant has received benefits which must be repaid to the agency. Benefits are denied.

Is the appeal timely?

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The employer provided evidence that the agency issued a decision with an incorrect appeal deadline. The employer's failure to file an appeal within the statutory appeal period was solely because of incorrect information received from Iowa Workforce Development (IWD). This delay was prompted by and perpetuated by the agency. See Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

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.

...

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The claimant left employment because she needed to relocate due to a domestic abuse situation. The administrative law judge is sympathetic to the claimant's perilous situation. However, while the claimant's decision to move to another locality and leave her employment was definitely for good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived? Can charges to the employer's account be waived?

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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. Iowa Code § 96.7. 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. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The July 21, 2017, (reference 01) unemployment insurance decision is reversed. The employer's appeal is timely. 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 been overpaid unemployment insurance benefits in the amount of \$2,144.00 and is obligated to repay the agency those benefits. The employer participated in the fact-finding interview and its account shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn