

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY M STOGDILL
Claimant

APPEAL NO. 14A-UI-07992-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAKAR INC
Employer

OC: 07/13/14
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 1, 2014, reference 02, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on August 25, 2014. Claimant Wendy Stogdill did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Aaron Smith represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Eight into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies her for benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits already paid or for future benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wendy Stogdill was employed by Kakar, Inc. d/b/a McDonald's in Clarinda as a part-time crew person from July 2013 until July 10, 2014 when she voluntarily quit to move to a new locality. Ms. Stogdill subsequently notified a shift manager that she was moving and could not fulfill the rest of her shifts. At the time Ms. Stogdill separated from the employment, the employer continued to have the same work available for her at the Clarinda McDonald's. *After* Ms. Stogdill separated from the employment, she contacted the employer and made a belated request to transfer to another of the employer's restaurants. The employer pointed out

that the request to transfer was too late and that it followed multiple no-call/no-show absences from the Clarinda McDonald's. The employer denied the belated transfer request, but told Ms. Stogdill she could apply at the other restaurant.

At the time of the July 31, 2014 fact-finding interview, the Claims Deputy attempted to contact the employer at a number other than the updated number the employer had provided for that purpose. The employer responded to a voicemail message left by the Claims Deputy and provided a statement for the fact-finding interview by leaving a voicemail message for the Claims Deputy. The Claims Deputy subsequently left a voicemail message for the employer indicating that the statement had been received. The employer had also indicated the reason for the separation in the initial protest. In the protest document, the employer indicated that the claimant had stopped showing up for scheduled shifts and was later found to have moved without letting the employer know that.

Ms. Stogdill established a claim for unemployment insurance benefits that was effective July 13, 2014 and has received \$380.00 in benefits for the period of July 13, 2014 through September 6, 2014. This employer is the claimant's primary base-period employer. The claimant's other base-period wages total only \$143.38.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

Iowa Admin. Code r. 871-24.25(2) provides:

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 § 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 § 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record establishes that Ms. Stogdill voluntarily quit the employment without good cause attributable to the employer to move to a new locality. Ms. Stogdill is disqualified for benefits until 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 employer's account will not be charged for future benefits.

The weight of the evidence indicates that the employer did participate in the fact-finding interview. The employer provided a statement via voicemail message, which verbal statement was acknowledged by the Claims Deputy. The employer had provided the same information in the written protest. The information provided by the employer for the fact-finding interview was sufficient to result in relief of charges absent rebuttal evidence from the claimant.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Ms. Stogdill lacks sufficient base-period wage credits to be eligible for reduced benefits based on base-period wages other than those from Kakar/McDonald's.

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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$380.00 in benefits for the period of July 13, 2014 through September 6, 2014. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid benefits and the employer will not be charged for benefits paid.

DECISION:

The Claims Deputy's August 1, 2014, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged for benefits already paid or for future benefits. The claimant was overpaid \$380.00 in benefits for the period of July 13, 2014 through September 6, 2014. The claimant must repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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