

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUDREY K OCKER
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 17A-UI-02496-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/22/17
Claimant: Respondent (4-R)**

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:

The employer filed an appeal from the February 23, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2017. Claimant did not participate. Employer participated through unemployment insurance consultant Alisha Weber and store manager Julie Guarin. Official notice was taken of the administrative record of claimant's benefit payment history and wage history, with no objection.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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: Claimant was employed part-time as a store employee from March 11, 2016, and was separated from employment on January 5, 2017.

The employer has a written, no fault, attendance policy that if an employee has two or more attendance occurrences in their first year, the manager may discharge the employee. An occurrence is an absence, tardy, or leaving early. The policy also provides that if an employee has two no-call/no-shows, they are considered to have quit; the no-call/no-shows do not have to be consecutive. If an employee is going to be absent they are supposed to call management

and report their absence at least an hour before their shift; employees have to call the employer, they are not allowed to have someone else call on their behalf. Claimant was aware of the policies.

Claimant was scheduled to work on January 3, 2017 and January 4, 2017, but she did not report to work for either day. Claimant did not call the employer to report her absences. On January 3, 2017, claimant's sister, also an employee (not management), told Ms. Guarin that claimant was not coming to work on January 3, 2017. Claimant's sister did not say anything about January 4, 2017. Ms. Guarin told claimant's sister that claimant needed to contact her or be at work. Claimant's sister told the employer that her sister had been arrested the night before (January 2, 2017), but claimant had been released by noon on January 3, 2017. Claimant's shift did not start until 4:00 p.m. on January 3, 2017. The employer considered claimant to be a no-call/no-show for January 3 and 4, 2017. After January 4, 2017, Ms. Guarin determined claimant had quit her employment. Claimant was next scheduled to work on January 5, 2017. Ms. Guarin would have discussed claimant's separation with claimant if claimant had reported to work on January 5, 2017, but claimant did not show up for work. Claimant was also scheduled to work on January 6 and 7, 2017. Claimant did not report to work on January 6 and 7, 2017. Claimant's sister only told the employer that claimant would not be at work on January 3, 2017.

Ms. Guarin testified that claimant had prior verbal warnings for absenteeism, but Ms. Guarin was not sure when the warnings were given to claimant. Ms. Guarin never told claimant she was discharged. Starting January 3, 2017, Ms. Guarin never heard from claimant again. There was work available for claimant had she not stopped coming to work.

The administrative record reflects that the claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether she is otherwise monetarily eligible. The administrative record reflects that claimant has received unemployment benefits in the amount of \$1647.00, since filing a claim with an effective date of January 22, 2017, for the nine weeks ending March 25, 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 claimant voluntarily quit this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after removal of these wage credits.

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 Code § 96.5(1)g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)g.

Iowa Admin. Code r. 871-24.25(4) 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 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:

(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). "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). 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).

Since the employer does not have a policy as set out in Iowa Admin. Code r. 871-24.25(4), the separation was not due to failure to call or report for three days. However, an employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant was scheduled to work on January 3 and 4, 2017. Although claimant's sister told the employer that claimant was not going to be at work on January 3, 2017, claimant did not follow the proper call off procedures. Claimant's sister was instructed that claimant needed to come to work or call the employer. Claimant failed to contact the employer. Furthermore, claimant's sister did not mention anything about claimant being absent on January 4, 5, 6, or 7, 2017. Claimant failed to have any contact with the employer on or after January 3, 2017 regarding her employment. Claimant's leaving the employment without notice or reason, and the failure to return to work or contact the employer renders the separation job abandonment without good cause attributable to the employer.

Inasmuch as claimant quit her employment without good cause attributable to the employer, the separation is disqualifying. Claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

DECISION:

The February 23, 2017, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged.

REMAND: Claimant's monetary eligibility after the quit of this part-time employment (employer account number 262054-000) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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