

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB L ARP**  
Claimant

**APPEAL NO: 18R-UI-10937-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AT&T MOBILITY SERVICES LLC**  
Employer

**OC: 08/26/18**  
**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 September 17, 2018, reference 01, 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 21, 2018. The claimant did not respond to the hearing notice and did not participate in the hearing. Austin Des Lauriers, Store Manager; Trent Mitchell, Area Manager; Cara O'Donnell, Business Account Manager; and Lindsay Gilbert, Employer Representative; participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily left his 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 assistant retail store manager for AT&T Mobility Services, LLC from October 30, 2015 to June 26, 2018. He voluntarily left his employment June 26, 2018.

On June 16, 2018, the claimant texted Store Manager Austin Des Lauriers who was on vacation and stated, "I have to let you know that this will be my last month. I'm really sorry. Life has just been really really hard for me lately and its what I need to do for my own mental health. I hope we end off on good terms" (Employer's Exhibit One). The claimant also contacted Area Manager Trent Mitchell by phone and told him he was planning to leave his job. Mr. Mitchell told the claimant he wanted to talk to him before he left and the claimant reiterated that he wanted to terminate his employment for his mental health. Mr. Mitchell met with the claimant later that week and the claimant brought up several issues he had with Mr. Des Lauriers regarding the way he managed the store. The claimant expressed concerns about the way Mr. Des Lauriers issued credits on accounts and also said the staff was treated poorly. Mr. Mitchell said he would investigate those allegations and did so over the rest of that day and the following day. Mr. Mitchell learned that there was an issue with the way Mr. Des Lauriers

issued credits on accounts but that situation was handled by a previous area manager. He also spoke to several staff members who did not concur with the claimant's statements regarding the way Mr. Des Lauriers treated employees. Mr. Mitchell contacted the claimant and told him he could not find any evidence substantiating his claims but stated he wanted to keep the claimant as an employee in that store or somewhere else in the company. He explained he needed to wait until Mr. Des Lauriers returned from vacation so all three of them could meet and the claimant agreed. Before that meeting took place, however, the claimant texted Mr. Des Lauriers and said he wanted to end his employment regardless. Mr. Des Lauriers contacted Mr. Mitchell who stated they had done everything they could to keep the claimant so they needed to accept his resignation.

The claimant has claimed and received unemployment insurance benefits in the amount of \$934.00 for the two weeks ending October 6, 2018.

The employer participated personally in the fact-finding interview through the statements of Store Manager Austin Des Lauriers.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his 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 told Mr. Des Lauriers and Mr. Mitchell he was leaving for his mental health. He subsequently made allegations against Mr. Des Lauriers to Mr. Mitchell who investigated immediately but could not corroborate the claimant's stated concerns. The employer made every effort to continue the claimant's employment but he chose to leave. The claimant has not provided any evidence that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be 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

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.

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 Store Manager Austin Des Lauriers. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$934.00 for the two weeks ending October 6, 2018.

**DECISION:**

The September 17, 2018, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he 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 \$934.00 for the two weeks ending October 6, 2018.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn