

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A FINKE
Claimant

APPEAL NO: 14A-UI-03480-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TINDALL HOTELS INC
Employer

OC: 03/09/14
Claimant: Respondent (4)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(37) – Resignation
871 IAC 24.25(21) – Dislike Work Environment
Section 96.3-7 – Recovery of Overpayment
871 IAC 24.10 – Fact Finding Participation

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 26, 2014, reference 01, that held he voluntarily quit with good cause attributable to her employer on March 26, 2014, and benefits are allowed. A telephone hearing was held on April 22, 2014. The claimant participated. Dan Tindall, Owner, and Mark Mershon, Attorney, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on May 31, 2005, and last worked for the employer as a full-time housekeeper on March 8, 2014. Claimant worked at a Cedar Falls, Iowa location while the business office is located in Grinnell.

Claimant had a written employment agreement with the employer and the most recent term was from June 15, 2013 through June 14, 2014. The agreement provided for compensation and benefits and work duties as housekeeping manager.

Claimant had a meeting with Owner Tindall about some work place issues and compensation on March 7, 2014. The employer offered claimant was paid fairly based on market standards. Claimant did not raise any work condition issues. Claimant was considering giving a two-week notice to quit employment. Claimant felt she was working more than other managers who were paid more than her.

The employer advised claimant it was going to install a security video/recorder system for safety considerations and so it could monitor work activity.

Claimant sent an e-mail to the employer the following day she was leaving employment. She offered work environment issues as the reason for not continuing employment. She confirmed she was quitting employment the next day.

Claimant has received benefits totaling \$2,080 through the week ending April 19, 2014 on her unemployment claim. She committed no act of fraud or misrepresentation to obtain benefits. The employer did not participate in department fact finding as recorded by the department representative. The employer/owner missed the call due to a cell phone issue.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.25(21), (37) 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:

(21) The claimant left because of dissatisfaction with the work environment.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to her employer due to resignation based on a dislike of the work environment effective March 8, 2014.

The focus of claimant's complaint of working for the employer was compensation. Claimant felt she was working more than other managers and she was paid less. Claimant felt stressed but she did not offer her doctor advised her to quit. While claimant did experience some unpleasant work conditions they do not rise to the level of intolerable or detrimental conditions.

Iowa Code section 96.3-7, as amended in 2008, provides:

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) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

871 IAC 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 administrative law judge further concludes claimant is overpaid benefits totaling \$2,080 through the six weeks ending April 19, 2014 due to the disqualification imposed in this decision. Since claimant committed no act of fraud or misrepresentation to obtain the benefits, the further issue is whether she must repay the overpayment.

The employer owner did not participate in department fact finding due to missing the representative call. The representative recorded the missed call and checked the employer did not participate.

The administrative law judge further concludes claimant is not required to repay the overpayment as the employer failed to participate in department fact finding and its account is charged with the benefits paid.

DECISION:

The department decision dated March 26, 2014, reference 01, is modified in favor of the employer. The claimant voluntarily quit without good cause due to her resignation on March 8, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is not required to repay the overpaid benefits of \$2,080 and the employer account is charged.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs