

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AJEH I AGBESE**

Claimant

**APPEAL 17A-UI-04212-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXCEPTIONAL PERSONS INC**

Employer

**OC: 03/19/17**

**Claimant: Respondent (2)**

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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 April 7, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant voluntarily quit work due to detrimental working conditions. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2017. The claimant, Ajeh I. Agbese, participated. The employer, Exceptional Persons, Inc., participated through Jessica Kalainoff, Associate Program Director. Employer's Exhibits A through F was received and admitted into the record. The administrative law judge took official notice of the administrative record and the fact-finding documentation.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to 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: Claimant was employed full time, most recently as a program manager, from October 2015 until March 7, 2017, when she quit. Claimant notified the employer via email on February 6, 2017, that she would be resigning with a last day of March 6, 2017. (Exhibit B) It appears that the final incident triggering claimant's decision to quit occurred on February 3, 2017. That day, claimant given a memo assigning her three tasks that needed to be completed by the following Monday morning. (Exhibit C) Kalainoff testified that this was a significant amount of work that claimant needed to complete over the weekend. She explained that all of the work was past-due work that claimant had failed to complete in a timely manner. She estimated that claimant would take approximately twelve hours completing this work. Kalainoff assigned this work over a weekend when claimant was scheduled to be on call, and she took over claimant's on call responsibilities that weekend so claimant could focus on catching up in her overdue work. The employer denies claimant would have been discharged had she not quit her employment, though claimant testified that she felt like her employer wanted to fire her.

Claimant listed three reasons for resigning in her email: conflicts with other obligations; her ADHD diagnosis; and practices of the agency with which she disagreed. Claimant testified that she disliked having to cover for the sites she managed when a site was short-staffed and another staff-member was not available for coverage. The employer agreed that this was one of claimant's job responsibilities and had been a part of her duties since she was hired. Additionally, several months before claimant's employment ended, she began having to take on-call weeks twice as often as before. The employer testified that this change was made to minimize the number of sites an on-call staff-member was responsible for. While claimant was on call twice as frequently, she was only supporting half the sites she had supported previously while on call. Claimant testified that she was diagnosed with ADHD and began seeking counseling and medical treatment as a result of her stressful work environment. While claimant frequently discussed her work stress with her doctor, her doctor did not advise her to quit her job and did not indicate that she required any accommodations. Kalainoff testified that claimant discussed this issue with her. Kalainoff worked with claimant on time management and tried to coach her to become more successful in her position. Claimant also testified that she left her job to go back to school and to provide consistent care for her children.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,290.00, since filing a claim with an effective date of March 19, 2017, for the four weeks ending May 6, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview. The employer submitted documentation showing Human Resource Director Lisa Paterno attempted to participate in the fact-finding process through documentation submitted via email on Tuesday, April 4, at 2:17 p.m. for the fact-finding interview scheduled for April 5. (Exhibit F) However, the fact-finder did not receive the documentation.

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

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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 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:

- (18) The claimant left because of a dislike of the shift worked.
- (21) The claimant left because of dissatisfaction with the work environment.
- (27) The claimant left rather than perform the assigned work as instructed.

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). Claimant intended to leave her employment and sent her employer a resignation via email, carrying out her intention to quit her job. 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). Claimant has not presented any evidence that her working conditions were detrimental or unsafe, and she has not shown that she was required to do anything different than what she agreed to do when she accepted employment with this employer. While she may have been required to work on-call more frequently than when she started, the employer credibly testified that this did not necessarily result in any more work for the claimant. Her doctor never indicated that claimant needed an accommodation at work, and claimant was not instructed by her doctor that she needed to quit her job. Claimant's decision to end her employment was without good cause attributable to the employer. Benefits are withheld.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 96.3(7)a-b, 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) (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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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.

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 un rebutted 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. 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. The benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, the employer did not participate in the fact-finding interview. Thus, claimant is not obligated to repay to the agency the benefits she received.

The law also states that an employer is to be charged if “the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits. . .” Iowa Code § 96.3(7)(b)(1)(a). Here, the employer responded to the notice of a fact-finding interview by emailing documentation to the Claims Bureau, which is a valid method of participating in an unemployment fact-finding interview. Benefits were not paid because the employer failed to respond timely or adequately to the agency’s request for information relating to the payment of benefits. Instead, benefits were paid because employer’s documents were not located by the fact-finding representative. Employer thus cannot be charged. Since neither party is to be charged then the overpayment is absorbed by the fund.

**DECISION:**

The April 7, 2017 (reference 01) unemployment insurance decision is reversed. Claimant separated from 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 \$1,290.00 and is not obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged. The benefits paid to claimant shall be absorbed by the fund.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs