IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

REBEKAH K TRASTER Claimant **ANIMAL RESCUE LEAGUE OF IOWA INC** Employer	**APPEAL 19A-UI-04929-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/19/19** **Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
871 IAC 24.10 – Employer Participation in the fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the June 11, 2019, (reference 01) decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2019. Claimant participated. Employer participated through Michael McAuliffe, Hanna Kittelson, Megan Davies and was represented by Colin Grace, attorney at law.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any 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 as an animal care technician beginning December 30, 2015 through May 26, 2019, when she voluntarily quit. On May 15 the claimant was suspended for allegedly going to the media about situation at work. The claimant was notified that the employer was going to conduct an investigation and if she was cleared by the investigation then she would be given back pay for all work shifts she missed. The claimant was not told how long the investigation would last or that she needed to be available to be called back into work with no notice. The claimant was then asked to leave the work place. As she did not drive she tried to call a friend for a ride. She did not ask anyone at the meeting or working for the employer to give her a ride home. Claimant was unable to find anyone to give her a ride home so she began walking home. Another coworker saw her walking picked her up and gave her a ride home.

The employer eventually determined that they could not establish the claimant as the source of the leak and decided she could return to work. At 4:49 p.m. on May 20, Ms. Kittelson called the claimant. When the claimant did not answer the telephone she left her voice mail message indicating the investigation was completed, claimant had been cleared to come back to work the following day. Claimant's normal work schedule was Sunday through Thursday 8:00 a.m. to 5:00 p.m. When the claimant quit her work schedule was still the normal 8:00 a.m. to 5:00 p.m. Sunday through Thursday. The claimant did not listen to the voice mail message until the next day after her scheduled start time for work had already passed. A series of text messages and phone calls between her and Ms. Kittelson followed. The claimant had no idea when if she would be called back to work so she had been babysitting and had made arrangements to clean someone's house around noon on May 21. Claimant asked if she could return back to work the next day May 22. The claimant was told she needed to return to work that day, or she would be given a final written warning for attendance. The claimant had other attendance warnings and issues prior to May 21. By 11:30 a.m. on May 21, the claimant knew that she was expected to report back to work sometime that day to avoid being written up. The employer had agreed that if the claimant worked even for an hour on May 21 they would not give her a final written warning. The claimant did not want to cancel the house cleaning job she had obtained. At 4:00 p.m. the claimant said she could not afford a thirty dollar Uber ride to work for one hour and that she would not be reporting back to work until May 22.

After learning that she would be written up for missing work on May 21, and because she did not like the way the employer told her about the investigation the claimant decided to quit. The claimant was then a no-call/no-show for work on May 22, 23 and 26. When the employer tried to reach her via text and telephone call when she did not report to work, the claimant sent a text message telling them to stop harassing her and to cease all contact with her. Claimant was paid for her normal work shifts during the time she was on suspension between May 15 and May 20. The claimant could have continued to work if she had chosen to do so.

The employer participated personally in the fact-finding interview through both Ms. Kittelson and Ms. Davies. The fact-finder was provided with essentially the same information that was provided at the appeal hearing. Claimant has received unemployment benefits since filing a claim with an effective date of May 19, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.25(6) 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:
>
> (6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(22) 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:
>
> (22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(28) 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:
>
> (28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

The employer had a right to carry out an investigation into a possible media leak by an employee. The claimant was not treated any differently than any other employee would have been in the same situation. While it would perhaps have been nice of the employer to give the claimant a ride home after suspending her; the fact that they did not does not create an intolerable work environment for the claimant. The claimant had attendance issues prior to the media leak incident arising. The employer was willing to forgo the written warning for attendance if the claimant had agreed to return to work for even one hour on May 22. The claimant chose not to do so. The claimant quit because she did not agree with the reprimand she was going to be given and she thought the employer was going to discharge her sometime in the future. The circumstances described by the claimant did not create an intolerable work environment that gave her good cause attributable to the employer for quitting the job.

Claimant's quitting while it may have been for good personal reasons was without good cause attributable to the employer and benefits are denied.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> 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.
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> 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.
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> (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.
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> (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 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant 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 employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer participated in the fact-finding interview

the claimant is obligated to repay the benefits she received to the agency and the employer's account shall not be charged.

DECISION:

The June 11, 2019, (reference 01) decision is reversed. The claimant voluntarily left her 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 $1,710.00 and she is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and their account shall not be charged.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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