

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LEE GOLDSMITH**

Claimant

**IA DEPT OF NATURAL RESOURCES**

Employer

**APPEAL 19A-UI-08469-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/06/19**

**Claimant: Respondent (2)**

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:**

On October 28, 2019, the employer filed an appeal from the October 21, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 25, 2019. Claimant did not answer at the telephone number she provided for the hearing and did not participate. Employer participated through bureau chief of customer and employee services Dave Cretors and was represented by Trenton Kilpatrick. Jeff Goerndt observed. Employer's Exhibit 1 was received.

**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 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 began working for employer on December 13, 2013. Claimant last worked as a full-time program planner III. Claimant was separated from employment on September 27, 2019, when she resigned.

Employer has a policy stating it does not tolerate violence or threats of violence in the workplace. Claimant was aware of the policy.

Claimant was a lead worker in employer's nursery. Claimant was not a supervisor. Five employees regularly worked at the nursery.

On May 2, 2019, claimant had an argument with another co-worker. The argument ended with the co-worker saying, "Stay the fuck away from me!"

Later that evening, the co-worker sent claimant a text message with a link to the song "Angel" by Sarah McLachlan. Claimant interpreted the song to mean that the co-worker felt like he was going to hurt himself. Claimant called the co-worker to ask if he was okay. Claimant explained she was afraid the co-worker was suicidal. The co-worker said that is not what he meant by sending the link to the song. After they hung up, claimant began to think the co-worker sent the link as a threat of harm to *her* because of the lyrics "in the arms of an angel."

On May 13, 2019, claimant reported the perceived threat to the Iowa Department of Administrative Services (DAS). Employer put the co-worker on paid leave while DAS investigated.

On July 12, 2019, DAS issued a report finding that in May the nursery was in its busy season and it took a toll on claimant and the co-worker. DAS concluded there was insufficient evidence that the co-worker was suicidal or was threatening claimant, but found the co-worker may have violated other work rules.

Employer then did its own investigation regarding whether the co-worker violated other work rules. Employer interviewed the co-worker who reported that after leaving the workplace on May 2, 2019, he felt distraught and was not thinking clearly. He heard the song "Angel" on the radio and it calmed him down. The co-worker reported he intended the same for claimant when he sent her the link to the song and that he did not intend to threaten claimant in any way.

Employer concluded that the co-worker violated other work rules and disciplined him. Employer then assigned the co-worker to return to work.

Employer came up with a plan in conjunction with DAS, its human resource department, and the Employee Assistance Plan to reintegrate the co-worker into the workplace. Employer planned to have a supervisor, Jeff Goerndt, present at the nursery four of the five days out of the workweek. Employer planned on clearly defining claimant's role and the supervisor, Jeff Goerndt, having bi-weekly meetings with all direct reports. Finally, Goerndt was assigned to conduct an operational review every three months.

Employer communicated its plan to claimant on September 13, 2019.

On September 16, 2019, claimant submitted a resignation notice.

On September 27, 2019, claimant attempted to retract her resignation with several stipulations. However, employer had already accepted her resignation.

Claimant has not received any unemployment insurance benefit payments since filing this claim.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

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).

In this case, claimant resigned because she did not want to work with a person who made her feel threatened. The evidence does not show the co-worker actually threatened claimant, although his use of profanity was certainly inappropriate. Employer disciplined the co-worker and developed a reasonable plan to return the co-worker to the workplace. The claimant still felt like her safety was at risk. In this day and age, the administrative law judge can understand claimant wanting to be safe rather than sorry. So the claimant may well have resigned for good personal reasons. However, employer showed it responded reasonably to the complaint and took proper precautions in the context of the situation. Therefore, claimant did not establish she resigned for a good cause reason attributable to employer.

Claimant has not received any benefit payments thus far. Therefore, claimant has not been overpaid benefits and any issues relating to overpayment will not be discussed further in this decision.

**DECISION:**

The October 21, 2019, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the 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.



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Christine A. Louis  
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November 27, 2019  
Decision Dated and Mailed

cal/scn