

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GABRIELA R ORTEGA
Claimant

CARE INITIATIVES
Employer

APPEAL 20A-UI-01008-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/19
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
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/appellant filed an appeal from the January 27, 2020 (reference 01) unemployment insurance decision that found the claimant was eligible for unemployment insurance benefits due to her discharge from employment. The decision further stated that the employer's account may be charged for benefits paid. The parties were properly notified of the hearing. A telephone hearing was held on February 19, 2020. The claimant, Gabriela R. Ortega, participated personally. The employer, Care Initiatives, was represented by Tanis Minters and participated through witness Kaitlyn Lewis. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant separated from employment?
Was the claimant discharged for disqualifying job-related misconduct?
Did the claimant voluntarily quit 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 began working for this employer on September 16, 2019 and remains employed there to date. She works full-time as a certified nursing aide at the employer's nursing home. Her job duties include caring for residents. Claimant's immediate supervisor is Lisa Knight.

On December 26, 2019, claimant had a death in her family. She took three days of bereavement leave pursuant to the employer's written policy on December 26, 2019; December 28, 2019; and December 29, 2019. Claimant was not ready to return to work after her bereavement leave and took additional days off of work on December 31, 2019; January 1,

2020, January 2, 2020, January 3, 2020, and January 6, 2020. She received a written warning for violating the attendance policy. She returned to work on January 7, 2020 and has continued working her normal scheduled shifts. Claimant has never been temporarily or permanently separated from employment with this employer.

Claimant filed her initial claim for unemployment insurance benefits with an effective date of December 29, 2019. She filed a claim for unemployment insurance benefits because she believed there was a chance she was going to be discharged when she did not come back to work after her bereavement leave expired.

Claimant's administrative records establish that she has not filed any weekly-continued claims for benefits, there has been \$0.00 in benefits paid on the claim to date, and that her claim is locked regarding an unemployment insurance decision dated January 27, 2020 (reference 02), which found that she was still employed in her job at the same hours and same wages. Claimant contacted Iowa Workforce Development but was told that she could not cancel her claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) Separations. All **terminations** of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. *Quits.* A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. *Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. *Other separations.* Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

(emphasis added).

Iowa Admin. Code r. 871-24.2(1)a provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

a. **Following separation** from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

(emphasis added).

Iowa Admin. Code r. 871-24.2(4)c provides:

Cancellation of unemployment insurance claim.

c. Cancellation requests **within the ten-day protest period**. The benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

(emphasis added).

Iowa Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the *individual is receiving the same employment from the employer that the individual received during*

the individual's base period, benefits paid to the individual **shall not be charged against the account of the employer**. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(emphasis added).

In this case, claimant was never separated from employment, temporarily or permanently. As such, no disqualification based upon a separation is imposed. The employer's account is not subject to charges as no benefits have been paid on the account and the unemployment insurance decision dated January 27, 2020 (reference 02) found that the claimant was employed for the same hours and same wages pursuant to Iowa Code § 96.7(2)a(2)a.

DECISION:

The January 27, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant has not temporarily or permanently separated from employment with this employer. No disqualification based upon a separation of employment is imposed. The employer's account is not subject to charges as no benefits have been paid on the account and the unemployment insurance decision dated January 27, 2020 (reference 02) found that the claimant was employed for the same hours and same wages pursuant to Iowa Code § 96.7(2)a(2)a.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn