

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANA A KEEGAN
Claimant

APPEAL NO: 15R-UI-04504-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

OC: 12/28/14
Claimant: Respondent (2/R)

Section 96 5-1 – Voluntary Leaving – Layoff
Section 96.4-3 – Able and Available for Work
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 26, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 19, 2015. The claimant participated in the hearing. Trisha Taylor, Human Resources Manager, and Jerry Sander, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assembler for Sears Manufacturing from February 10, 2014 to March 12, 2015. The employer shut down over the holidays and employees were paid their base wages between December 24, 2014 and January 4, 2015. The claimant was paid an estimated \$600 per week for the two weeks of the shutdown.

The claimant filed a claim for benefits with an effective date of December 28, 2014. She did not report her wages earned from the employer during the week ending January 3, 2015. The claimant testified she was not aware she would be paid for the second week of the shutdown but did not notify the Department when she did learn the employer paid her for both weeks.

The claimant claimed and received benefits in the amount of \$368 for the one week ending January 3, 2015.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

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.

While the two-week layoff was attributable to a shut down by the employer, employees were paid for that time. The claimant did not report those wages to the Department when she discovered she had been paid for those two weeks.

While the two week separation was attributable to a lack of work by the employer, the claimant was paid her regular wages but failed to report those wages. Therefore, because the claimant was paid during the shutdown, benefits are denied.

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 non-participation, 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 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. In this case, the claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview personally or through written statements. Consequently, the claimant's overpayment of benefits must be waived and she is not overpaid benefits.

However, the claimant received wages during the shutdown but failed to report those wages to the Department. The issue of the claimant's overpayment, with regard to whether her actions constitute fraud, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial determination and adjudication.

DECISION:

The January 26, 2015, reference 01, decision is reversed. The employer was on a two-week shutdown but the claimant was paid her regular wages during that time. Benefits are denied. The claimant has been overpaid unemployment benefits for the one week ending January 3, 2015; in the amount of \$368. The employer did not participate in the fact-finding interview and consequently the claimant shall not be required to repay those benefits, with regard to the participation in the fact-finding issue only. The issue of whether the claimant's failure to report her wages for the week ending January 3, 2015 is remanded to the Benefits Bureau for an initial determination and adjudication of whether the claimant's actions were fraudulent. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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