

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HOLLY A KELLY
Claimant

APPEAL NO. 15A-UI-05538-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAY HANUMAN INC
Employer

OC: 04/19/15
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Jay Hanuman (employer) appealed a representative's May 5, 2015 decision (reference 01) that concluded Holly Kelly (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 8, 2015. The claimant participated personally. The employer participated by Hiren Patel, Owner. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 31, 2014, as a full-time assistant general manager. The employer does not have a handbook and did not issue the claimant any warnings. On April 11, 2015, the claimant was supposed to work from 8:00 a.m. to 4:00 p.m. Later she was supposed to work from 12:00 a.m. to 8 a.m. on April 12, 2015. After that she planned to take time off to get married to a co-worker. On April 11, 2015, the fiancé's father had a heart attack. The fiancé called the employer to say the claimant had to leave work early to go to the hospital with the fiancé. The fiancé told the employer the claimant would not be at work for the later shift either. The employer did not understand this and sent the claimant some texts later in the day asking for information. The employer was willing to work for the claimant but he needed time to drive to the work location.

The claimant did not respond to the employer for seven hours. When she did respond, she started the conversation by saying, "We are at the frickin' hospital and too busy to talk". Later in the text conversation the employer responded, "I understand but there should be a few minutes to call to let someone know about this. Are you coming back to work". The claimant told the employer she was returning after the wedding. The employer let the claimant know that her

fiancé told him she was returning to work that evening. The claimant told the employer they were staying in Des Moines, Iowa. The employer did not have keys to all the doors and asked the claimant to return hers as soon as she was in town. The claimant said she would.

On April 19, 2015, the claimant brought the keys, petty cash, and name tag to the employer. She told the employer she was done and wanted her paycheck. Continued work was available had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of April 19, 2015. She received \$1,518.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on May 4, 2015, by Hiren Patel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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 claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant told the employer she was done and walked out. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

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.

The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact-finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

DECISION:

The representative's May 5, 2015, decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact-finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs