

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA S LOPEZ**

Claimant

**APPEAL NO. 17A-UI-05520-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROCK SERVICES LLC**

Employer

**OC: 04/23/17**

**Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit

Section 96.5-1-c - Voluntary Quit for Care of Family Member

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Brock Services (employer) appealed a representative's May 17, 2017, decision (reference 01) that concluded Lisa Lopez (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 12, 2017. The claimant participated personally. The employer participated by Nancy Jones, Human Resources Coordinator. Exhibit D-1 was received 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 July 30, 2015, as a full-time scaffold builder/carpenter to work in Iowa. She was hired out of the Baton Rouge, Louisiana, office while the claimant was living in Mississippi. The claimant's husband was injured while he was working on a shrimp boat. He could not walk and the claimant had to care for him in Mississippi. On or about September 28, 2016, the claimant told her supervisor she had to stop working to care for him. The supervisor told the claimant the job was almost over and people were being laid off. Her husband needed her care for about three weeks. In February 2016, the claimant called the Baton Rouge, Louisiana, office and said she was ready to return to work. No work was available.

The claimant filed for unemployment insurance benefits with an effective date of April 23, 2017. She received \$2,682.00 in benefits after the separation from employment. The employer did not participate in the fact finding interview on May 16, 2017.

**EASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.28(8) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(8) The claimant voluntarily left employment. However, there shall be no disqualification under section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

Iowa Admin. Code r. 871-24.26(8) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

The claimant left work to take care of her husband who was injured. The claimant's husband sufficiently recovered and the claimant did not returned to and offered her services to the employer for months. The claimant delayed her return to employment. The employer cannot be expected to hold a job for the claimant indefinitely.

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.

Iowa Admin. Code r. 871-24.25(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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 her actions. She was absent from work for personal reasons for more than ten working days. When an employee is absent from work for more than ten working days for compelling personal reasons, her leaving is without good cause attributable to the employer. The claimant left work for more than ten working days for compelling personal reasons. Her leaving was without 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 section 96.3(7)a, b.

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. The employer did not meaningfully participate in the fact finding interview and is chargeable. The claimant's overpayment is waived.

#### **DECISION:**

The representative's May 17, 2017, 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. The employer did not meaningfully participate in the fact finding interview and is chargeable. The claimant's overpayment is waived.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs