

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMOURA MANNING

Claimant

APPEAL NO: 13A-UI-14313-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

OC: 12/01/13

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Stream International, Inc. (employer) appealed a representative's December 19, 2013 decision (reference 01) that concluded Samoura Manning (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2014. The claimant participated in the hearing. Sharon Robertson appeared on the employer's behalf and presented testimony from three other witnesses, Derek Hahn, Sandra Conklin, and Laura Karmann. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Was the claimant overpaid unemployment insurance benefits and is that overpayment subject to recovery?

FINDINGS OF FACT:

The claimant started working for the employer on July 7, 2011. She worked part time (16 hours per week) as a customer service professional at the employer's Sergeant Bluffs, Iowa call center. Her last day of work was October 28, 2013.

The claimant had previously worked more hours, but had scaled back her schedule to only working Sundays and Mondays from 8:00 a.m. to 6:00 p.m. On October 28 she had talked to the employer about further changing her schedule to be more flexible, so that she could just work whenever she was available. This was due to family responsibilities and the fact that she was in school. The employer advised her that it could not accommodate that request. She requested a 30-day leave of absence, which the employer also denied.

The claimant called in absences on November 3 and November 4, but then was a no-call/no-show for work on November 10, November 11, November 17, and November 18. The employer tried to call the claimant on November 18, but was unable to get through to her. The employer therefore determined that the claimant had voluntarily quit her position through job abandonment.

The claimant established an unemployment insurance benefit year effective December 1, 2013. A fact-finding interview was scheduled and conducted on December 18, 2013. On December 17, 2013 the employer's third-party representative sent a letter to the fact finder stating the dates of employment, the assertion that the claimant had been absent or a no-call/no-show for work after October 28, and the assertion that she had voluntarily quit. The letter ended with, "For additional information, please contact our State Agency Response Center at (number) or (email) or me at (number) or you can reach me via email at (email) or fax (number)", signed by Sandra Conklin. The Claims representative attempted to reach Ms. Conklin at the day and time for the hearing, but was unable to reach her. She is a representative with the employer's third-party representative group, and does not have first-hand information regarding the claimant's situation. The employer therefore "participated" in the December 18 fact-finding interview only by submitting the documentation on December 17.

The claimant has received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. 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. The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

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.

871 IAC 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 § 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 § 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 § 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 § 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 § 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 § 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The employer did not provide a live person to participate directly in the fact-finding interview. Further, although the employer provided written documentation in lieu of personal participation, the employer did not comply with the requirement of the rule which specifies, “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.” 871 IAC 24.10. There has been no showing that the claimant received benefits due to fraud or willful misrepresentation; therefore, since the employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

DECISION:

The representative’s December 19, 2013 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 18, 2013, 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. The claimant was overpaid unemployment insurance benefits, but she is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css