

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMAS GONZALEZ DIAZ
Claimant

APPEAL NO: 18A-UI-01354-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 12/17/17
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Leave

STATEMENT OF THE CASE:

Wells Enterprises, Inc. filed a timely appeal from a representative's unemployment insurance decision dated January 17, 2018, reference 02 that held the claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on December 6, 2017, for no disqualifying reason. After due notice was provided, a telephone hearing was held on February 22, 2018. Although duly notified, the claimant did not participate. The employer participated by Mr. Ryan Hutchinson, Human Resource Business Partner.

ISSUE:

The issue is whether the claimant left employment with good cause that was attributable to the employer.

FINDINGS OF FACT:

The testimony and the evidence in the record, the administrative law judge finds: Tomas Gonzalez Diaz was employed by Wells Enterprises, Inc. from May 8, 2017 until December 6, 2017. Mr. Gonzalez-Diaz was hired as a production worker, but mostly recently was employed as a crew leader on the company's night shift. Claimant was employed full-time and was paid by the hour.

Mr. Gonzalez-Diaz last reported to work on December 6, 2017. The claimant began calling off work each day, accumulating attendance infraction points and causing the employer to go short-handed or find a replacement for the claimant. Mr. Gonzalez-Diaz had been experiencing difficulty in meeting a number of job duties in his new position of crew leader. The employer suspicion was that the claimant was calling off work each night because of issues that the claimant was having with his job.

The company has a "no-fault" attendance policy, and the claimant began accumulating infraction points each time that he did not report for work. Employees are subject to discharge when they accumulate ten infraction points.

In an apparent effort to determine the claimant's status and to keep him as an employee if possible, Mr. Hutchinson contacted the claimant by telephone on December 14, 2017. Mr. Hutchinson offered to give the claimant assistance so that he could succeed in his current job as crew leader, and to offer the claimant the opportunity to stay on as a production worker, if he did not want to stay as the crew leader. In addition to the offers to help the claimant succeed in his new job, and the option to return to his former work, the employer was also willing to reduce the number of infraction points that the claimant had accumulated for his absences between December 6 and December 14, 2017. The company had made no decision to discharge the claimant.

During the telephone conversation, the claimant declined the offer of assistance; instead it was his intention to resign.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). When a person voluntarily quits employment due to dissatisfaction with the work environment or inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21)(6).

In this matter, the employer witness participated personally, answered questions, and provided sworn testimony. In the absence of any other evidence of equal weight either contradicting; denying, or explaining the evidence of the employer, the administrative law judge concludes that the claimant chose to voluntarily quit his employment with Wells Enterprises, Inc. where work continued to be available to him.

The claimant was contacted by the employer after he had been absent from work for several days in a row. Because the employer believed that the claimant had been absent because he was having difficulty with his new job/position, the employer called the claimant to offer him more training and assistance in performing his crew leader job and also give the claimant the option of returning to his former position with the company, leaving the choice to Mr. Gonzalez-Diaz. The employer's witness testified that the claimant had not been given the choice of quitting or being fired, but had voluntarily stated that it was his intention to quit employment. The administrative law judge concludes that the evidence in the record does not establish that the claimant left employment with good cause attributable to the employer. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, the benefits the claimant has received could constitute overpayment. The administrative record reflects that the claimant has received unemployment benefits in the amount of \$1,338.00 since opening his claim with an effective date of December 17, 2017 for the week ending dates December 23, 2017 through January 6, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal.

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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's unemployment insurance decision dated January 17, 2018, reference 02 is reversed. Claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefits amount, and is otherwise eligible. Claimant has been overpaid job insurance benefits in the amount of \$1,338.00 and is liable to repay that amount. The employer's account shall not be charged because the employer participated in the fact-finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn