

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEILA M BUTLER
Claimant

HAWKEYE CARE CENTER OF DUBUQUE
Employer

APPEAL 19A-UI-09001-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19
Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Hawkeye Care Center of Dubuque (employer) appealed a representative's November 7, 2019, decision (reference 01) that concluded Keila Butler (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 held on December 10, 2019. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Amy Turner, Human Resources Specialist.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

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 June 5, 2019, as a full-time certified nurse's aide working from 10:00 p.m. to 6:30 a.m. The claimant signed for receipt of the employer's handbook on May 18, 2019, when she applied for the job. The handbook stated that employees should personally notify a supervisor of an absence no later than 60-minutes before the start of the scheduled shift. Three consecutive absences without proper notification are treated as a voluntary resignation.

On July 5, 2019, the claimant arrived at work three hours late. On July 11, 2019, the claimant was absent for an unknown reason. The employer issued her a verbal warning for attendance on July 12, 2019.

The claimant did not report her absence on July 18, 2019. After the employer left her telephone messages, the claimant's mother called saying the claimant had a sick child. On August 9, 2019, the employer issued her a written warning for attendance and reporting issues. The employer told the claimant that further infractions could result in termination from employment.

On August 26, September 9 and 10, 2019, the claimant was absent due to a medical issue. The claimant worked ninety minutes for another worker on September 11, 2019. She did not return to work that day for her shift or report her absence. The claimant was absent due to illness on September 24, 2019. On September 29, 2019, the claimant did not properly report her absence. When contacted, she texted that she was at the emergency room. On October 3, 2019, the employer issued the claimant a final written warning for attendance and reporting issues. The employer notified the claimant that further failure to report would result in termination from employment.

The claimant was next scheduled to work on October 6, 2019. She sent a text to the employer saying she was not sure if she could work. She called at 9:30 p.m. and said she was out of town, could not work, and could not find a replacement. On October 7, 2019, the claimant called the employer and said she would be twenty minutes late. She appeared at 12:22 a.m., two hours and twenty-two minutes late. The employer had found a replacement for the claimant and sent her home.

On October 9, 11, and 12, 2019, the claimant did not appear for work or notify the employer of her absence. The employer wrote the claimant a letter on October 14, 2019, but accidentally typed the date October 10, 2019. The letter informed the claimant that the employer considered the claimant to have abandoned her job. Continued work was available had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of October 20, 2019. She received \$952.00 in benefits after the separation from employment. The employer provided the name and number of Amy Turner as the person who would participate in the fact-finding interview on November 5, 2019. The fact finder called the number provided and "Tracy" told the fact finder that Amy Turner was not available. The fact finder was told to use the documents the employer provided. The employer did not provide documents for the fact-finding interview. On November 2, 2019, it did provide an electronic protest known as a SIDES form.

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 section 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(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.

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 stopped appearing and quit work. When an employee quits work after having been reprimanded, her leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded. 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 employer did not meaningfully participate in the fact finding interview and is chargeable. The claimant's overpayment is waived.

DECISION:

The representative's November 7, 2019, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. 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 employer did not meaningfully participate in the fact finding interview and is chargeable. The claimant's overpayment is waived.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn