

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KALLIE M JOHNSON
Claimant

PILOT TRAVEL CENTERS LLC
Employer

APPEAL 19A-UI-02632-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/28/18
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 21, 2019, (reference 03) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 16, 2019. Claimant did not register for the hearing and did not participate. Employer participated through general manager Jason Bass, lead supervisor Cameron Bly, and manager Kesha Waddle. Employer's Exhibit 1 was received.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer September 6, 2016. Claimant last worked as a full-time shift supervisor. Claimant was separated from employment on February 27, 2019, when she resigned.

On February 8, 2019, claimant was working. Claimant had a verbal disagreement with a subordinate employee. Claimant took a long break and the subordinate employee told claimant that it was "stressful" when she did so. Claimant reacted to the situation by lashing out and leaving the workplace for two hours. Claimant also left the shift early that evening.

The next day, on February 9, 2019, claimant came into employer's office and behaved belligerently. Claimant stated that she was giving her two weeks' notice of resignation.

Claimant worked one more shift for employer, but then failed to appear for the rest of her shifts.

On approximately February 27, 2019, claimant approached employer and attempted to withdraw her resignation notice. Employer stated it had accepted her notice of resignation.

Claimant has not received any unemployment insurance benefit payments since filing this claim with an effective date of October 28, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

In this case, claimant gave a notice of resignation and employer accepted her resignation. Claimant resigned after a verbal dispute with her subordinate employee. The subordinate employee behaved reasonably throughout the situation. It was claimant who behaved unreasonably. Claimant failed to show she resigned for a good cause reason attributable to employer and is disqualified from receiving benefits based on this separation from employment.

Because claimant has not received any benefit payments, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The March 21, 2019, (reference 03) unemployment insurance decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn