

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MIRSADA HAMZIC
Claimant

MAINSTREAM LIVING INC
Employer

APPEAL 17A-UI-00953-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/01/17
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 January 20, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2016. The claimant, Ms. Mirdada Hamzic, participated personally. The employer, Mainstream Living Inc., participated through Marcanne Lynch, Erica Voll, and Cory Johnson. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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: The claimant was employed full-time as a direct support professional beginning in 2007 and was separated from employment on December 20, 2016, when she quit the employment. Continuing work was available.

The claimant tendered her verbal resignation and two weeks' notice to her immediate supervisor, Erica Voll, in response to her interactions with a client served by the employer. The employer serves a population of individuals with intellectual disabilities in various residences, and the claimant had been assigned to the same "home" containing approximately four clients, during the tenure of her employment. Approximately one and one half months before the claimant's separation, the residence received a new client. The client had been with the employer for over twenty years but was relocated to the facility with the claimant because of

issues with her roommate. Over the course of the month and a half with the new client, the claimant learned that the client was making up stories or telling lies about the claimant to other employees, including that the claimant refused to help her when she had fallen down the stairs. The claimant indicated the client also yelled at her and threw a lunchbox at her. Because the employer serves dependent adults, there are circumstances in which the claimant's conduct with clients could be reported to DHS and she/the employer could be investigated. While no complaint was ever filed against the claimant, she was concerned that this was an imminent possibility given the client's dishonest behavior.

The claimant previously reported her concerns to immediate supervisor, Erica Voll, who was aware of the client's behaviors. Ms. Voll had spoken with the client, was working with the client's therapist and working on adjusting medications. Ms. Voll also asserted her support for the claimant, assuring her that she knew the client was being dishonest in these occasions and that she supported the claimant. The claimant called Ms. Voll after a particularly bad day with the client, stating she could no longer work with her. The claimant was reminded that it was the client's home, and that her choices including working with her in the house, transferring to another house with the same hours and wages or quitting. The claimant did not think it was fair that she should have to transfer from the house since she had been there for ten years and tendered her resignation.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,436.00, since filing a claim with an effective date of January 1, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview by way of Erica Voll.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

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(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.

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. See 871 IAC 24.25. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). In the case of a resignation because of suspected illegal or unethical corporate behavior, the proper inquiry is whether a person of reasonable prudence would, in like circumstances, believe that improper or illegal activities were occurring at the place of work and that these activities necessitated the individual's quitting. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record fails to establish detrimental working conditions that would constitute good cause for quitting under Iowa law.

In this case, the claimant quit her employment after ten years due to a new client who moved in, and who the claimant determined she could not work with, out of fear of a possible DHS investigation and due to the client's meanness. The credible evidence presented is that the client was new to the home which the claimant worked at, but had been with the company over 20 years, and had documented intellectual disabilities. The claimant's supervisor was aware of the claimant's concerns which included yelling, throwing a lunch box and lying about the claimant's refusal to help her. There were no physical acts of violence made against the claimant. The claimant and her supervisor agreed that no report had been made because of the claimant's interactions with the client, although the administrative law judge is aware the claimant's fear was that one could arise because of the client.

The administrative law judge recognizes the importance of and challenging work that working with dependent adults may face from time to time. The administrative law judge is sympathetic to the claimant having to encounter an angry or even lying client, as she did at the end of her employment, but it cannot be ignored that the client had intellectual disabilities, which the claimant was aware of, and moving her because she was not nice to the claimant was not a feasible option. The employer also offered to remove the claimant from the situation and place her at a new residence under the same hours and wages, to which the claimant refused. Based on the evidence presented, the administrative law judge concludes that while the claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Iowa Code § 96.3(7)a-b provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to § 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to § 602.10101.

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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The claimant has been overpaid benefits in the amount of \$2,436.00. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that it did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. The employer satisfactorily participated in the fact-finding interview by way of Erica Voll. Since the employer did participate in the fact-finding interview the claimant is obligated to repay the benefits she received and the employer's account shall not be charged.

DECISION:

The January 20, 2017, (reference 01) decision is reversed. The claimant quit 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. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,436.00, and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs