

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEIRDRE JONES
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 19A-UI-04356-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/28/19
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:

On May 28, 2019, the employer filed an appeal from the May 17, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2019. Claimant did not participate. Employer participated through Hearing Representative Frankie Patterson and witness Ray Cramer. Official notice was taken of the fact-finding documents and portions of the administrative record involving benefits claimant has received to date.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 8, 2018. Claimant last worked as a full-time account resolution specialist. Claimant was separated from employment on April 27, 2019, when she voluntarily resigned.

The last day claimant worked was March 21, 2019. At that time claimant and Cramer had a discussion about a non-work related medical condition she was struggling with. Cramer advised claimant that if she could not come in to work she needed to call in each day to report her absence or request an accommodation or leave from the accommodation department. Claimant indicated she understood and that should not be a problem.

Over the next few weeks, claimant did not come to work and would regularly fail to call in to report her absences on a daily basis. On April 5, 2019, claimant agreed to call Cramer by April 8 to discuss a plan for returning to work. Claimant did not call by April 8. On April 23,

2019, the employer sent claimant a letter, via overnight mail, instructing her to either return to work or contact Cramer by April 27, 2019. The letter advised claimant that if she did not do one of those things, she would be considered to have voluntarily separated from employment.

On April 26, 2019, claimant called and spoke to Cramer. Cramer advised claimant she could either return to work the next day or seek a formal leave of absence through the accommodations department. He further explained that if she did not do anything she would be considered to have abandoned her job. Claimant asked about resigning and was told that if she resigned, it would not negatively affect her chances for future employment with the company. Claimant elected to resign, rather than return to work or request a leave of absence. Had claimant not resigned, she would have been allowed to return to work on April 27. Claimant has made no attempt to return to work, nor has she had any further contact with the employer. Cramer was unaware of claimant's current medical status.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 28, 2019. The claimant filed for and received a total of \$2,017.00 in unemployment insurance benefits for the weeks between April 28 and June 8, 2019. The administrative record shows the employer, through its third-party representative, decline to participate in a telephone fact finding interview regarding the separation on May 16, 2019. The third party administrator submitted a written statement in lieu of participation. That statement gave the dates of employment and said, "The claimant voluntarily quit for personal reason as he/she had domestic obligations." The employer's representative declined to provide a name or telephone number for anyone to participate in the hearing. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to employer.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 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.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2)

(amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant went on an unapproved leave of absence beginning March 21, 2019. She was told to call in and report any days she was going to be absent or to request a leave of absence. Claimant did not request a formal leave of absence and failed to regularly call in to report she would not be at work. On April 5, 2019 claimant spoke with Cramer and agreed to call him with an update by April 8, 2019. Claimant did not call with an update. Claimant was given notice in writing by the employer that she should contact Cramer regarding her work status or return to work by April 27, 2019. Claimant was specifically advised in the letter that if she failed to contact the employer or return to work by that date, the employment relationship would end. Claimant contacted Cramer on April 26, 2019. Cramer advised claimant that she could either return to work or request a leave of absence through the accommodations department. Claimant elected not to pursue either of those options, but to resign employment effective immediately, so as to not jeopardize her chance of rehire in the future.

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Empl't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign her position rather than return to work while she was dealing with a non-work related medical condition. Claimant was given the opportunity to request an accommodation or medical leave of absence, but chose to resign rather than pursue those options. The employer testified claimant would have been allowed to return to work on April 27, had she not resigned. Claimant has not established that the medical condition was work related or that treating medical personnel advised her to quit the job, as is her burden. Additionally, she failed to pursue any accommodation or leave options available to her through the accommodations department. Claimant has made no attempt to return to work and the employer is not sure of her current medical status. While claimant's leaving 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 are denied.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

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.

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 § 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides 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 they did participate in the fact-finding interview. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

The regulation provides that for voluntary quits, at a minimum, a written statement must include the reason for quitting. Here, the written statement simply referred to "domestic obligations." No mention was made of the specific reason why claimant resigned, though the testimony given at the appeal hearing shows the employer was clearly aware of the specific reason. Additionally, the regulation provides that "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(1). The employer's third party representative elected not to provide this information. Under these circumstances the employer has not shown it satisfied the requirements of the participation rule. Since the employer did not meet the participation standard for the fact-finding interview, claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

DECISION:

The May 17, 2019, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left her 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 \$2,017.00, but is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs