IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ANTONIETTA M MCTIGUE Claimant **FAREWAY STORES INC** Employer	**APPEAL 21A-UI-18603-LJ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/04/21** **Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-Finding

STATEMENT OF THE CASE:

On August 24, 2021, the employer filed an appeal from the August 20, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant quit due to detrimental working conditions. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Wednesday, October 13, 2021. The claimant, Antonietta M. McTigue, participated. The employer, Fareway Stores, Inc., participated through witness Matthew Janssen, Store Manager; and witness/representative Stephanie Rohrer, Human Resources Generalist. Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired by Fareway Stores, Inc., on September 2, 2020. Throughout her employment, claimant worked part-time hours as a cashier. Claimant's employment ended on June 30, 2021, when she quit.

On June 18, claimant was finishing her shift and waiting for the next employees to arrive so she could leave. She commented to a certain full-time employee ("FT") that she could not stay late and would need to leave at her scheduled departure time, regardless of whether the next employees had arrived. FT then yelled at claimant, accused her of being rude and disrespectful, and told her that upper managers hated her and did not respect her. Claimant became upset and drafted a hand-written resignation notice stating she was putting in her two-week notice. She placed the note up in the office, clocked out early, and then left the store.

The following day, Janssen arrived at the store and found claimant's resignation note. He then noticed that claimant clocked out earlier than she was scheduled to leave. Janssen asked FT what had occurred, and FT told Janssen that claimant was heated and very upset, indicating he was not doing anything wrong.

When claimant arrived at work on June 19, Janssen tried to talk with her about what occurred the night before. Claimant yelled at him that FT was "mean," saying "nothing ever gets done about him." Janssen tried to de-escalate claimant to no avail. Claimant seemed to demand to know how Janssen was going to discipline FT. Janssen told claimant that other employees' disciplinary records were not anyone's business. At that point, claimant exclaimed, "Nothing's ever going to get done," and she left the office.

After this incident, Janssen began communicating with HR and corporate to determine how best to resolve the situation. Claimant also emailed Kevin, the store's district supervisor, to report FT for the incident that occurred on June 18. On June 24, multiple members of corporate upper management came to the store and met with claimant to address her concerns. During that conversation, they proposed ways to resolve the issues she was experiencing with FT and told her they wanted her to remain an employee with the company. Claimant said it did not matter and indicated she would be quitting regardless.

Claimant described other behavior of FT's that she found objectionable. He made derogatory comments about working mothers and about individuals who chose to get vaccinated against COVID-19. She indicated he had difficulty getting along with numerous other employees. She had previously reported her issues with FT to an assistant manager, who responded that it was not his problem to handle. Claimant never escalated the issue to Janssen, HR, or corporate prior to June 19.

The administrative record reflects that claimant has received unemployment benefits in the amount of $4,114.00, since filing a claim with an effective date of July 4, 2021, for the fourteen weeks ending October 9, 2021. The administrative record also establishes that the employer provided information in its statement of protest that, without rebuttal, would have resulted in disqualification. Rohrer included her telephone number and email address in the protest information, and it does not appear the fact-finder reached out to her for additional information after reviewing claimant's questionnaire.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code §96.5(1) provides:

> An individual shall be disqualified for benefits:
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> 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. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.25 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:
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> (6) The claimant left as a result of an inability to work with other employees.
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> (21) The claimant left because of dissatisfaction with the work environment.

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). Here, the testimony in the record establishes that claimant had an obnoxious coworker. FT was opinionated and vocal, perhaps difficult to work with, and an overall unpleasant coworker. However, nothing about FT's behavior was genuinely hostile or abusive. Claimant did not describe any profanity, any threats, any unwanted physical contact, or any other behavior that would create an intolerable work environment. FT's conduct was not the sort that would cause the average person to quit her job.

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). Claimant delivered a resignation letter to the employer. She was offered an opportunity to stay employed, and she declined. While claimant may have left her employment for a good personal reason, she has not established she quit for a good-cause reason fairly attributable to the employer. Benefits are withheld.

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> 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 section 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 section 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 state pursuant to section 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.
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> …
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> 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 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 they 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. Since the employer did participate in the fact-finding interview through its protest response, the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The August 20, 2021 (reference 01) unemployment insurance decision is reversed. Claimant separated from 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 $4,114.00 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.

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Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 20, 2021
Decision Dated and Mailed

lj/scn