

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERI J WHITAKER
Claimant

APPEAL 23A-UI-06526-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER
Employer

**OC: 05/28/23
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)A – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment
Iowa Admin Code R. 871-24.10

STATEMENT OF THE CASE:

The employer, Great River Medical Center, filed an appeal from the June 21, 2023 (reference 01), unemployment insurance, decision that allowed benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on July 18, 2023. Claimant, Jeri Whitaker, participated and testified. Employer, Great River Medical Center, participated through Todd Morehead. No exhibits were offered or admitted.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired on May 1, 2017 as a Registered Nurse. The last day the claimant physically worked for the employer was May 22, 2023. The claimant submitted her resignation via email on May 19, 2023 because she was moving to Park Falls, Wisconsin on July 8, 2023. The claimant was going on vacation June 23, 2023. The claimant's written resignation notice indicated her last day of work would be June 23, 2023. Continuing work was available to the claimant had she not resigned.

On May 22, 2023, the claimant left work due to several conflicts occurring amongst co-workers while at work. On May 23, 2023, the claimant was not scheduled to work. On May 24, 2023, the claimant did not report to work because she was getting her thoughts together. On May 25, 2023, the claimant met with Mr. Morehead. She told him she was willing to work out the rest of her resignation period. Mr. Morehead called the claimant back on May 26, 2023 and told her that since the claimant had walked out on May 24 and not returned, her remaining shifts had been covered and the claimant was not needed to work out her notice period.

The claimant was paid \$2,204.00 in regular state unemployment benefits for the four weeks since the filing effective date of May 28, 2023. The employer participated in the fact-finding interview.

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 § 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 §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. (38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

In this case, Claimant's decision to quit because she was moving to Park Falls, Wisconsin was not a good cause reason attributable to the employer. The claimant did provide a resignation notice period in her resignation notice. However, the claimant left work during a shift and did not return. She did request to return to work days later, to finish out her resignation period. However, by that time, the employer had filled the claimant's shifts and she was no longer needed. The reason the employer filled the claimant's shifts with other employees is not because the claimant had submitted a resignation. The employer filled the shifts because the claimant left work prior to the end of a shift and did not return until days later. As such, the claimant's benefits during the resignation period are not allowed and the claimant is not eligible for benefits during the resignation period.

Iowa Code section 96.3(7)a-b, as amended in 2008, 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 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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

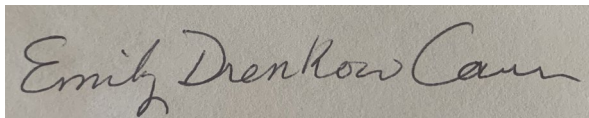
(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and 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.

The administrative law judge concludes that claimant is overpaid unemployment insurance benefits in the amount of \$2,204.00 for the 4 weeks since the filing effective date of May 28, 2023, pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been reversed. The employer participated in the fact-finding interview and the claimant is required to repay the overpayment. The employer's account shall not be charged.

DECISION:

The June 21, 2023, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. The claimant is not eligible for benefits during her resignation period. 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.



Emily Drenkow Carr
Administrative Law Judge

July 25, 2023
Decision Dated and Mailed

ed/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.