

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAITLIN SCOTT
Claimant

APPEAL 22A-UI-04614-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DELDEN GARAGE DOORS INC
Employer

**OC: 12/26/21
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a - Discharge for Misconduct
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
Iowa Admin. Code r. 871-24.25(37) - VQ - Resignation accepted
Iowa Admin. Code r. 871-24.26(12) - VQ - Resignation caused Discharge for notice period

STATEMENT OF THE CASE:

Employer/appellant, Delden Garage Doors Inc., filed an appeal from the February 10, 2022, (reference 01) unemployment insurance decision that allowed benefits as the record indicates the 12/23/21 dismissal from work was not for a current act of misconduct. After proper notice, a telephone hearing was conducted on April 5, 2022. Claimant/respondent, Caitlin Scott, did not participate. Employer participated through Rick Vinson, president. Judicial notice was taken of the administrative files, including the attachments to the appeal.

ISSUES:

Was the separation a layoff, discharge for misconduct, or a voluntarily quit without good cause?
Was claimant overpaid benefits, and if so, should claimant repay the benefits?
Should the employer's account be charged?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence and record, the undersigned finds:

Claimant was a full-time customer service employee with a set schedule. She started with employer on November 9, 2020, and her last day worked was December 23, 2021. December 16, 2021, claimant submitted an email providing notice of her resignation effective after work shift on December 31, 2021. Employer accepted the resignation and on December 23, 2021, discharged her from work as opposed to having her work through the end of her notice.

Records show claimant has received \$386.00 in benefits on this claim for the benefit week ending (BWE) 01/01/22. Her weekly benefit amount is \$386.00.

The undersigned found no documentation regarding fact finding. However, a fact finding would have taken place and employer testified that he and claimant participated in a phone call as to what happened. Since employer submitted a response and or documents for fact finding and per the definitions in Iowa Admin. Code r. 871-24.10(1), employer did participate in fact finding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was a voluntary quit with a good cause attributable to the employer for one week and not good cause for the rest.

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.

Iowa Admin. Code r. 871-24.25(4) 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.

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).

Iowa Admin. Code r. 871-24.26(12) 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:

(12) 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.

December 16, 2021, Claimant submitted a resignation and voluntarily quit, which the employer accepted the resignation. This is a voluntary quit without good cause and benefits are denied. However, employer discharged her on December 23, 2021, so she was unable to work through the end of her resignation notice period, end of work December 31, 2021. This makes claimant eligible for benefits for the period December 23 - December 31, 2021 (last day of work until proposed date of resignation), with benefits denied effective December 31, 2021. Claimant was not unemployed for the majority of her first week, but she was unemployed for the majority of her second week and is eligible for benefits for that week.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 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.

(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.

(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, except for the period of December 23, 2021 – December 31, 2021, as addressed above, any benefits paid on the claim outside of that window would be benefits 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.

Claimant received \$386.00 in benefits on this claim for the week ending 01/01/2022, which covers the week she would be entitled to benefits. Claimant was not overpaid benefits. Because claimant was entitled to the benefits received, the issue of whether employer’s account should be charged or credited based upon participation in fact-finding is moot.

DECISION:

The February 10, 2022, (reference 01) unemployment insurance decision is **MODIFIED** in favor of appellant. Claimant voluntarily quit without good cause attributable to employer (submitting her resignation on 12/16/21 effective 12/31/21), but was then discharged on 12/23/21, due to the resignation, creating good cause from 12/23-31/21.

Benefits are allowed for the week ending 1/1/22, and claimant was paid that week, so there is no overpayment. Thereafter, 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 issue of employer being charged is moot as claimant was properly paid for the week she was, and has not been paid for any other week.



Darrin T. Hamilton
Administrative Law Judge

April 8, 2022
Decision Dated and Mailed

dh/scn