

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MATHEW T RIDNOUR
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL NO. 15A-UI-00123-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/30/14
Claimant: Respondent (2)**

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated December 24, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 19, 2015. Claimant participated personally. Employer participated by Victoria Benson.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 5, 2014. Claimant stated that he'd been missing a number of days because of illness. On November 5, 2014, claimant stated that he was told by a coworker who was told by a contractor that claimant was not needed on the job anymore because of his ongoing illnesses. Claimant was never told by any representative of Employer that he was not needed on the job. Claimant stated that he was working in Nebraska, and immediately went back to Des Moines and entered into a hospital, where he remained for the next couple of weeks.

Claimant never contacted his employer to see if he had been removed off of the job. Employer was not able to get hold of claimant until November 18, 2014, and at that time claimant stated he had been in the hospital. Employer tried on multiple occasions to contact claimant, because they did not know of claimant's condition. Claimant called employer one time in the middle of December.

Claimant has never been released from a doctor to return to work. Employer had ongoing work available for claimant.

Employer stated that they did not participate in the fact-finding interview as they did not receive notice of the interview until after the unemployment insurance decision had already been issued. Claimant has been in receipt of unemployment payments since the date of job separation.

REASONING AND CONCLUSIONS OF LAW:

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 Code § 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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.

Claimant in this matter failed to maintain any sort of contact with employer for an extended period of time. Between November 5, 2014 and December 18, 2014 claimant did not have any contact with employer. Employer was reasonable when it determined that claimant had quit his employment as claimant did not keep employer informed as to his status. Should claimant have contacted employer on his way to the hospital in Des Moines, or while he was in the hospital, or returned any of the multiple calls made to him during that time period, employer would have arguably been responsible for keeping claimant employed, if on a leave of absence. Claimant could have also asked to move ahead with FMLA paperwork in this matter. His absence of doing any of these efforts created a situation where employer was correct to believe that claimant had voluntarily quit his employment.

Employer gave credible evidence that it did not participate in the fact-finding interview as employer did not receive documentation concerning the interview in a timely manner. Employer's account will not be charged for employer's failure to participate in fact finding.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was ill and stopped contacting his employer.

The overpayment issue was addressed also. Claimant admitted he has been in receipt of unemployment payments which reached back to November 5, 2014. Claimant was not entitled to receive these payments as his job separation was as the result of a voluntary quit not attributable to employer. Claimant is deemed to have been overpaid \$2,200.00 for the weeks ending December 6, 2014 to February 14, 2015.

DECISION:

The decision of the representative dated December 24, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant is deemed to have been overpaid \$2,200.00 for the weeks ending December 6, 2014 to February 14, 2015. Employer's account shall not be charged for employer's non participation in fact finding as employer did not receive notification of the interview in a timely basis.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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