

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEPHANIE A HEATHERSHAW
Claimant

APPEAL NO. 14A-UI-03369-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 03/02/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Pilot Travel Centers, L.L.C. filed a timely appeal from a representative's decision dated March 20, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 21, 2014. Claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Greg Holliday, General Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Stephanie Heathershaw began employment with Pilot Travel Centers, L.L.C. on March 5, 2013. Ms. Heathershaw was most recently employed as a full-time retail sales specialist and was paid by the hour. Her immediate supervisor was the general manager, Mr. Greg Holliday. Ms. Heathershaw left her employment on February 18, 2014 by clocking out prior to the end of her work shift and not returning.

Although Ms. Heathershaw was scheduled to work 9:00 a.m. until 5:00 p.m. on February 18, 2014, the claimant clocked out at 2:11 p.m. without the permission of the general manager or the general manager's knowledge. Ms. Heathershaw did not again report for scheduled work. Repeated attempts by the employer to contact Ms. Heathershaw by telephone went unanswered and Ms. Heathershaw did not return messages to contact the employer about why she was not returning to available employment. The claimant's "significant other" who was also employed by the company could provide no information to the employer about why Ms. Heathershaw had discontinued to report for work. Work continued to be available to the claimant at the time of her leaving.

REASONING AND CONCLUSIONS OF LAW:

Based upon the evidence in the record the administrative law judge concludes that the claimant voluntarily left employment and was not discharged by the employer. The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with good cause attributable to the employer. She did not.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee, Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

In the case at hand, the claimant's general manager participated personally and provided sworn testimony. Although given the opportunity to participate in this matter, the claimant did not respond to the notice of hearing and did not participate. Mr. Holliday, the general manager, testified that the claimant left employment without notice on February 18, 2014 prior to the end of her shift and did not return to available employment although the employer had attempted to contact Ms. Heathershaw on numerous occasions. The evidence in the record establishes that work continued to be available to Ms. Heathershaw at the time that she left and that the company was allowing the claimant to return to a cashier position within the company, at her request.

There being no evidence to the contrary, the administrative law judge concludes that the claimant has not sustained her burden of proof in establishing that she left employment with good cause attributable to the employer. Unemployment insurance benefits are, therefore, withheld.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$1,356.00 since filing a claim with an effective date of March 2, 2014 for the weeks ending March 8, 2014 through April 12, 2014. The administrative record also establishes that the employer did participate in the fact-finding interview or make a firsthand witness available for rebuttal.

Iowa Code section 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.

871 IAC 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 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 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, 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. 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, the claimant is obligated to repay the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The representative's decision dated March 20, 2014, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work

equal to ten times her weekly benefit amount and is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,356.00 and is liable to repay that amount. The employer's account is not subject to charging as the employer participated in the fact finding.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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