

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON WEST**  
Claimant

**APPEAL NO: 14A-UI-13481-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FISHER BUILDING**  
Employer

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

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 22, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 27, 2015. The claimant participated in the hearing. John Eddy, Operations Manager for the Windows Division and Jeridan Nesbitt, Foreman, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment for 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 employed as a full-time window cleaner for Fisher Building from September 4, 2014 to November 20, 2014. He voluntarily quit by walking off the job.

On Tuesday, November 18, 2014, John Eddy, Operations Manager for the Windows Division, notified the employees they would be working overtime Saturday, November 22, 2014. The claimant was absent that day and consequently he was notified of the overtime Wednesday, November 19, 2014. The claimant stated he had to try to find a sitter for his two children.

On the morning of Friday, November 21, 2014, Mr. Eddy reminded employees, and the claimant specifically, they had to work overtime Saturday, November 22, 2014. The claimant was sitting in the work truck with Foreman Jeridan Nesbitt and told Mr. Eddy he would not be working because he did not have childcare. Mr. Eddy told the claimant he had notified him earlier in the week that he needed to figure something out and the employer really needed him there. Mr. Eddy also mentioned the claimant had missed a lot of work lately and again stated the employer really needed him there to help complete a big job that had to be done that day. The claimant became loud and argumentative and began yelling that it was not his babysitter's responsibility to watch his children on a Saturday. Mr. Eddy stated he was aware of that but the employer needed the help and he was giving him the opportunity to work because of the

previous days the claimant had been absent lately. As the claimant continued to yell Mr. Eddy asked him to get out of the truck so they were not conducting the argument in front of Mr. Nesbitt. Mr. Eddy wanted to go in the warehouse to talk but instead the claimant began walking toward his personal truck. Mr. Eddy said he simply wanted to talk about the situation and settle it. The claimant told Mr. Eddy to "get the fuck out of my face." Mr. Eddy followed the claimant and he got in his truck. Both men were yelling at this point. Mr. Eddy repeated that he just wanted to talk about the situation and get it straightened out. The claimant exited his truck and took his coat off and Mr. Nesbitt thought he did so in preparation of engaging in a physical fight with Mr. Eddy. Mr. Nesbitt could not hear what was said next but the claimant got back in his truck and "tore out of the parking lot." Mr. Eddy never told the claimant to go home or that his employment was terminated. The claimant called Mr. Eddy late that afternoon and asked what he should do with his shirts and Mr. Eddy said he could drop them off when he picked up his check as Mr. Eddy determined the claimant voluntarily quit by walking off the job and calling to ask what to do with his uniform shirts.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,216.00 since his separation from this employer.

The employer did not participate in the fact-finding interview. Mr. Eddy was out of town on a job. The employer requested a postponement of the fact-finding interview but the Department does not reschedule fact-finding interviews. The employer did not submit any written documentation regarding the facts surrounding the claimant's separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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.

The claimant was instructed he needed to work overtime Saturday, November 22, 2014, but then told the employer he could not do so because he did not have childcare. When Mr. Eddy asked him about it the claimant became very angry and was belligerent toward Mr. Eddy. Not wanting to conduct the argument in the work truck with Mr. Nesbitt present, Mr. Eddy told the claimant to exit the truck so they could go to the warehouse and discuss the situation but instead the claimant went to his personal truck in the parking lot and continued yelling and swearing at Mr. Eddy. The claimant chose to walk off the job and the employer concluded he

voluntarily quit his job. The claimant's actions evinced an intention to voluntarily quit his job. He refused to work overtime, yelled and swore at Mr. Eddy, and then walked away from Mr. Eddy toward his truck rather than going to the warehouse to continue the discussion. He got in his truck and left while Mr. Eddy was still trying to talk to him.

While the claimant stated Mr. Eddy terminated his employment, the employer was very busy at the time and could not afford to lose an employee. The claimant stated Mr. Eddy would not let him close his truck door and then jerked open his truck door after that and put his hands on him, assaulting him. The claimant's testimony was contradicted by Mr. Eddy and Mr. Nesbitt and was not persuasive. He did not report the alleged assault to the employer or the police and did not try to call the owner until November 24, 2014. The claimant also testified Mr. Eddy called him later that afternoon but could not explain why he would do so after just terminating his employment. Additionally, he could not explain why, if he was in fear of Mr. Eddy while in his truck, he did not lock the doors despite his testimony that Mr. Eddy opened his truck door, the claimant closed it, and Mr. Eddy opened it again and reached in to grab him. Mr. Eddy and Mr. Nesbitt's testimony about the events of November 21, 2014, were more credible than that of the claimant.

Under these circumstances, the administrative law judge concludes the claimant has not met his burden of proving his leaving was for good cause attributable to the employer. Therefore, benefits are denied.

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.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

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. In this case, the claimant has received benefits but was not eligible for those benefits. There is no evidence the claimant received benefits due to fraud or willful misrepresentation. However, the employer did not participate in the fact-finding interview personally or through written statements. While Mr. Eddy was out of town, the fact-finder has the ability to call him anywhere. If that were not possible, the employer

could have submitted written statements detailing the events that led to the claimant's separation from employment, and a phone number of an employer's witness who could offer rebuttal statements to the fact-finder if needed. Consequently, the administrative law judge finds the employer did not participate in the fact-finding interview and the claimant's overpayment of benefits to date must be waived and his overpayment in the amount of \$2,216.00 shall be charged to the employer's account.

**DECISION:**

The December 22, 2014, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant's overpayment of benefits to date must be waived and his overpayment in the amount of \$2,216.00 shall be charged to the employer's account.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs