

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAMIE R MORGAN

Claimant

APPEAL NO. 18A-UI-10339-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/09/18

Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's October 5, 2018, decision (reference 02) that concluded Jamie Morgan (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 30, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Dustin Mogle, Store Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 13, 2018, as a full-time store employee/delivery driver. She signed for receipt of the employer's handbook on May 15, 2018. The handbook indicated how to report absences and the claimant demonstrated she knew how to report her absences.

The claimant was tardy for work sixty-four days of the eighty-eight days she worked. On July 11, 2018, the employer gave the claimant a verbal warning for failure to follow dress code. On August 24, 2018, the claimant received a written warning for failure to attend mandatory kitchen training. On August 30, 2018, the employer issued the claimant a written warning for insubordination. The employer notified the claimant in the last two warnings that further infractions could result in termination from employment.

On September 13, 2018, the claimant properly reported her absence due to a medical issue. The employer told the claimant her shift was covered. Unbeknownst to the employer, the claimant went to a clinic that day regarding strain in her right shoulder. The claimant did not provide the employer with a note restricting her from work.

The claimant did not report her absence or appear for her shift on September 14, 15, 16, 19, 20, 21, 22, and 23, 2018. The employer did not hear from the claimant after September 13, 2018. On September 25, 2018, the employer considered the claimant to have abandoned her job. Continued work was available had the claimant not resigned.

The claimant filed for unemployment insurance benefits with an effective date of September 9, 2018. She received \$274.00 in benefits after the separation from employment. The employer provided the name and number the person who would participate in the fact-finding interview on October 4, 2018. The fact finder called the person but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The person responded to the message and returned the call. She told the fact finder that she had no dates or details about the final incident for which the claimant was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. She stopped appearing for work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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 section 96.3(7)a, b.

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 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.

The employer did not meaningfully participate in the fact finding interview and is chargeable. The claimant's overpayment is waived.

DECISION:

The representative's October 5, 2018, decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The employer did not meaningfully participate in the fact-finding interview and is chargeable. The claimant's overpayment is waived.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs