

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTA J STOROY
Claimant

SCHINDLER ELEVATOR CORP
Employer

APPEAL 17A-UI-03554-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/05/17
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the March 20, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2017. Claimant did not participate. Employer participated through representative RoxAnne Rose and service field superintendent Steve Williams. Official notice was taken of the administrative record, including claimant's benefit payment history and fact-finding documents, with no objection.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an elevator apprentice from June 2, 2016, and was separated from employment on October 10, 2016, when she quit.

Around October 6, 2016, Mr. Williams had a conversation with claimant. During the conversation, Mr. Williams told claimant to take a couple of days off because there was not going to be a lead mechanic for her to work with for the next couple of days. As an elevator apprentice, claimant's job duties were to help the lead mechanic. Mr. Williams also told claimant that if she wanted speak to her business agent about finding work closer to home (claimant lived approximately three hours from the employer's main location) and something more long term that it would be ok with the employer. Mr. Williams was aware that the work for the employer may slow down soon, but he did not know when any layoffs may happen.

Claimant told Mr. Williams that was fine. This was the last time Mr. Williams spoke to claimant. Mr. Williams expected claimant to return in a couple of days when there was a mechanic available for her to work with.

Around October 10, 2016, Mr. Williams received a voice message from claimant's business agent. The business agent wanted to know why Mr. Williams had placed claimant on a layoff, which was not allowed by the union contract. Around October 11, 2016, Mr. Williams returned the business agent's call and explained that he had not placed claimant on a layoff. Mr. Williams told the business agent that claimant was just off work for a couple of days. The business agent told Mr. Williams not to worry about it because the business agent found claimant another job closer to home and she was going to work at that job. The business agent would not have allowed Mr. Williams to put claimant on a layoff because of the union contract.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$774.00, since filing a claim with an effective date of February 5, 2017, for the three weeks ending February 25, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview by providing written documentation that, without rebuttal, would have resulted in disqualification. The administrative record reflects claimant has wages reported for other employer(s) after her separation from SCHINDLER ELEVATOR CORP.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

The employer gave claimant the opportunity to take a couple of days off until a mechanic returned for her to work with. The employer expected claimant to return from this break; however, around October 11, 2016, the employer was notified by her business agent that she had left the employer to work for a different company. Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify claimant from receiving benefits, claimant did leave in order to accept other employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The March 20, 2017, (reference 02) decision is modified in favor of the appellant. Claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided claimant is otherwise eligible. The account of the employer (SCHINDLER ELEVATOR CORP, account number 135298-000) shall not be charged.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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