

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT E WHITE
Claimant

APPEAL 16A-UI-13035-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 11/13/16
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
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 December 5, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2016. Claimant did not participate. Employer participated through director of human resources Theresa McLaughlin. Official notice was taken of the administrative record of claimant's benefit payment history and wage history.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 part-time as a market clerk from May 11, 2015, and was separated from employment on August 2, 2016.

Claimant was separated from employment on August 2, 2016 after he had two consecutive weeks of failing to report his absences or return to work. The employer has a policy that if an employee is going to absent for extended period of time due to illness or injury, they are to make advanced arrangements with their manager. Claimant was aware of the policy.

Prior to July 5, 2016, claimant was injured when he was not working for the employer. Claimant properly contacted the employer for the work week of July 5, 2016 and reported he would be absent for the week due to the injury. Claimant then properly called the employer for the work week of July 11, 2016, and reported that things were not better and he would be out that week too. Claimant did not mention to the employer any being absent any other week. Claimant did not have any further contact with the employer until November 2016.

Claimant was scheduled to work three days a week during the work weeks of July 18, 2016 and July 25, 2016. Claimant did not work any of his scheduled shifts during these two work weeks and he did not contact the employer to report his absences.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2364.00, since filing a claim with an effective date of November 13, 2016, for the six weeks ending December 24, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview. The administrative record also shows that claimant has not requalified for benefits since this separation but reflects he appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer, and has not requalified but appears to be otherwise monetarily eligible.

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 § 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall

not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)g.

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

See also, *McCarthy v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 201 (Iowa 1956) wherein the court held that persons who become unemployed by a layoff from their full-time employer cannot be disqualified for a previous voluntary quit from a part-time employer.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Requiring employees to inform their manager if they are going to be absent for an extended period of time is a reasonable work rule. Claimant was aware of this work rule and for the first two work weeks (work weeks July 5 and 11, 2016) he followed the employer's work rule. However, the next two work weeks (work weeks July 18 and 25, 2016), claimant failed to contact the employer or show up for his scheduled shifts. Claimant missed six consecutive shifts without contacting the employer and although the employer was aware of claimant's injury (not related to this employer), it reasonably expected him to return to work the week of July 18, 2016 because claimant had not provided the employer with any reason not to expect him back at work.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Employer's attribution of the absences as a separation of employment was reasonable as it is not expected to hold employment for employees that fail to maintain contact with the employer. Claimant's leaving the employment

without notice or reason, and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law.

Inasmuch as claimant voluntarily quit without good cause attributable to the employer, the separation is disqualifying. However, claimant has not requalified for benefits since the separation but appears to be otherwise monetarily eligible according to base period wages. Thus, claimant may be eligible for benefits based upon those other wages. The account of this employer (FAREWAY STORES INC, account number 006745-000) shall not be charged.

DECISION:

The December 5, 2016, (reference 02), unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided claimant is otherwise eligible. The account of this employer (FAREWAY STORES INC, account number 006745-000) shall not be charged.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs