

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MISGINA N GEBREMEDHIM
Claimant

APPEAL 19A-UI-03653-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEI SALES LLC
Employer

**OC: 11/18/18
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)a – Discharge Misconduct
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:

On May 3, 2019, the employer filed an appeal from the April 23, 2019, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 23, 2019. Claimant did not participate. Employer participated through Hearing Representative RoxAnne Rose and witnesses Doug Carter, Ron Harnack, and Sam Hansen. Employer's Exhibit 1 was received into evidence. Official notice was taken of portions of the administrative record relating to benefits claimant has received to date and the fact finding documents.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 8, 2019. Claimant last worked as a full-time freezer track specialist. Claimant was separated from employment on March 22, 2019, when he voluntarily quit.

On March 17, 2019, claimant was observed by his immediate supervisor, Harnack, standing back and watching while several other employees attempted to unjam the assembly line. Harnack asked claimant to go help. Claimant became angry, exited the freezer, threw his hard hat on the ground, and began yelling at Harnack. Harnack told claimant he could not react that way and needed to leave. Claimant refused to go, so security was called and escorted him out. An investigation into the incident was opened.

On March 19, 2019 Hansen spoke with claimant on the phone. Claimant asked about the status of his employment. Hansen told claimant he was suspended pending investigation. Several days later Hansen spoke with claimant again to set up a time for him to meet with Human Resources (HR). Claimant indicated during that conversation that he wanted to resign, but not

until he had a chance to meet with HR. At no point during either conversation did Hansen tell claimant he was discharged.

On March 22, 2019, Carter met with claimant to talk about the March 17 incident. At multiple points in the conversation claimant asked to resign. Carter eventually asked claimant to write a written resignation, which he did. (Exhibit 1). At the time of claimant's resignation, the investigation was still ongoing and no decision had been made to terminate him from employment. Carter testified claimant likely would have been allowed to return to work following his suspension had he wished to remain employed.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 18, 2018 and an additional date of March 24, 2019. The claimant filed for and received a total of \$467.00 in unemployment insurance benefits for the weeks between December 2, 2018 and January 19, 2019, but has not received any benefits since separating from this employer. The employer did not participate in a telephone fact finding interview regarding the separation on April 16, 2019, as the wrong telephone number was provided to Iowa Workforce by the employer's third-party representative. Documents submitted through the SIDES response system, containing basic employment information were submitted along with the claimant's resignation letter. The third-party representative did not attempt to contact IWD when she failed to receive a call for the fact-finding interview. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25 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.

...

- (28) The claimant left after being reprimanded.

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). 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). Claimant resigned after he was suspended pending an investigation into an incident in which he was alleged to have been insubordinate. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied. As claimant has not received any benefits since his separation with this employer, the issues of overpayment and participation are moot.

At the time of the hearing, official notice was taken of the administrative record. The administrative record shows claimant filed for and received benefits for the two-week period ending January 19, 2019. Claimant did not report earning any wages for the weeks ending January 12 or January 19, 2019. The employer testified claimant began working for them full-time on January 8, 2019. As such, the issue of whether claimant failed to properly report wages must be remanded for investigation of the unreported wages.

DECISION:

The April 23, 2019, (reference 02) unemployment insurance 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 issues of overpayment and participation are moot.

REMAND:

The issue of whether claimant failed to properly report wages when filing his weekly claim for the two-week period ending January 19, 2019, is remanded to the Investigations and Recovery Unit for further investigation.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs