IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

NATALIE J PREWITT Claimant **ELVERSON VASEY & ABBOTT LLP** Employer	**APPEAL 16A-UI-13164-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/28/16** **Claimant: Respondent (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
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:

Elverson, Vasey & Abbott, LLP (employer) filed an appeal from the September 20, 2016 (reference 02) unemployment insurance decision that amended the decision dated September 19, 2016 (reference 01) and allowed benefits based upon the determination Natalie J. Prewitt (claimant) voluntarily quit her employment due to detrimental conditions which is a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2017. The claimant participated personally. The employer participated through Partner Todd Elverson. Claimant's Exhibits A through C were offered and received into the record. Employer's Exhibit 1 was offered and received into the record. Department's Exhibits D-1 through D-3 were received.

ISSUES:

Is the employer's appeal timely?
Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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?
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: The claimant was employed as a Legal Assistant and Legal Secretary beginning on February 16, 2016 and was separated from employment on September 1, 2016. She was originally hired for part-time work but became full-time in July 2016. The claimant reported directly to any of the three partners in the law firm: Todd Elverson, Jon Vasey, or Allison Abbott. When she was

hired, Elverson told her she could take any problems she had with anyone to any of the partners.

In August 2016, the claimant entered some information into Vasey's calendar incorrectly. He sent her an email about the situation. The claimant went to his office to discuss the situation and Vasey was short with her. The claimant then sent out an email to all three partners stating she was under stress that was causing her pain due to her impairment. She requested to reduce her hours and work at a standing desk. Both of which were granted. Vasey later came by the claimant's desk and asked her if her request was because he was being an "asshole." Vasey went on vacation and when he returned the claimant had no further negative interactions with him as he no longer asked her to assist him with his job duties.

Around the same time, the claimant had a negative interaction with her co-worker Megan. During the discussion, Megan yelled at the claimant that she was tired of walking on eggshells around her. The claimant reported the interaction to Abbott and did not have any further issues with Megan.

On September 1, 2016, Elverson gave the claimant a letter to dictate. He had not requested in his dictation that a carbon copy be sent to the client; as a result, the claimant did not include a copy to the client at the end of the letter. Elverson explained to the claimant that it was customary for the client to be sent a copy of the letter. However, he also acknowledged during the discussion, that there are times when the client would not receive a copy. Elverson was not yelling or cursing at the claimant; however, she felt he was being condescending. At the end of the day, the claimant placed her key to the office on her desk and left.

The following day, Elverson called the claimant at lunch time to ask if she was coming to work or if she had the day scheduled off. The claimant responded that she had left her key on her desk and quit. She followed up with an email stating the key was on her desk and he should have noticed it. She also stated she did not like the dysfunctional work environment and offered to subcontract for Elverson personally in the future, if needed.

The claimant filed a claim for unemployment insurance benefits the week of August 28, 2016. The administrative record reflects that claimant has received unemployment benefits in the amount of $1,704.00, since filing a claim with an effective date of August 28, 2016, for the 16 weeks ending December 17, 2016. A fact-finding interview was held on or about September 19, 2016. Both the claimant and Elverson participated. However, the employer had not received notice of the fact-finding interview and Elverson happened to be present in the office to take the fact-finder's call.

The same day, a decision was made finding the claimant ineligible for unemployment insurance benefits. The decision was mailed to the employer at an address on Court Avenue in Des Moines, Iowa. The employer has been located at Second Avenue in Des Moines, Iowa since July 2011. The following day, a second decision amending the first and finding the claimant eligible for benefits was mailed to the employer at the address on Court Avenue. The first letter decision that denied benefits was forwarded to the employer's address on Second Avenue. However, the second letter was not forwarded.

On November 9, 2016, a Statement of Charges was mailed to the employer's address on Second Avenue. The Statement of Charges stated the claimant had received benefits the prior quarter which were chargeable to the employer's account. Elverson contacted customer service to find out why the employer was being charged for benefits when the claimant had been disqualified. Customer Services contacted Kevin Irvine in Quality Control. Irvine audited the

employer's account. On December 9, 2016, Elverson spoke to Irvine who informed him of the second decision finding the claimant eligible for benefits. Elverson asked for a copy of the decision which Irvine faxed to him. Elverson filed an appeal to the decision on the same day.

REASONING AND CONCLUSIONS OF LAW:

Is the employer's appeal timely?

For the reasons that follow, the administrative law judge concludes the employer's appeal is timely and jurisdiction exists to decide the merits of the appeal.

Iowa Code section 96.6(2) provides:

> 2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer timely appealed the November 9, 2016, Statement of Charges, which was the first notice of qualification. Therefore, the appeal shall be accepted as timely.

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

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from her employment but voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant made a voluntary decision to leave her employment. She left her key on the desk and, the following day when she was asked if she was coming to work, she indicated she had quit. No one told the claimant she had been discharged. The employer has met its burden of proof to show the claimant voluntarily let her employment.

The 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). Individuals who voluntarily leave their employment due to an inability to work with others, personality conflicts with their supervisor, following a reprimand, or due to a dislike of the work environment are presumed to have left without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25.

The claimant testified she left following a reprimand or discussion with her supervisor about a letter she had dictated for him. The claimant had other ongoing issues with another supervisor and a co-worker that caused her stress. The average person would not find the claimant's work environment detrimental or hostile. The claimant has not established that she voluntarily quit with good cause attributable to the employer. Accordingly, benefits are denied.

Has the claimant been overpaid unemployment insurance benefits? Can the repayment of those benefits to the agency be waived? Can charges to the employer's account be waived?

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. Iowa Code § 96.7. 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. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits.

Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The employer's appeal is timely. The September 20, 2016 (reference 02) unemployment insurance decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of $1,704.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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