

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA L COOPER
Claimant

APPEAL NO. 19A-UI-06924-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRACKER BARREL OLD COUNTRY STORE
Employer

OC: 08/04/19
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 20, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 30, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on September 24, 2019. Claimant Rhonda Cooper did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Jean Montgomery represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.

Whether the claimant voluntarily quit without good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rhonda Cooper was employed by Cracker Barrel Old Country Store as a part-time retail sales clerk from September 2018 and last performed work for the employer on July 29, 2019. Deann Lily, Retail Manager, was Ms. Cooper's immediate supervisor. On July 29, 2019, Ms. Cooper was scheduled to work from 5:00 p.m. to 10:00 p.m. Ms. Cooper arrived late without giving notice to

the employer that she would be late for the shift. At 8:00 p.m., Ms. Cooper told the manager on duty, Jean Montgomery, Senior Associate Manager, that she would be leaving in one hour and that Ms. Montgomery needed to find someone to cover the remainder of the shift. When Ms. Montgomery asked Ms. Cooper why she needed to leave early, Ms. Cooper told Ms. Montgomery that she was a grown woman and did not need to provide a reason. Ms. Montgomery told Ms. Cooper that, in light of the fact that Ms. Cooper intended to leave before the scheduled end of the shift, she did need to provide a reason for the early departure. Ms. Cooper told Ms. Montgomery that she was just going to leave there and then. Ms. Montgomery warned Ms. Cooper that if Ms. Cooper left early, she would deem her to have abandoned the employment. Ms. Cooper left anyway. At no time did Ms. Cooper provide a reason for her early, unauthorized departure. Ms. Cooper made no mention to a health concern as the basis for the early departure. Ms. Montgomery had contacted Ms. Lily when Ms. Cooper initially announced that she would be leaving early and needed coverage for the remainder of her shift. It was Ms. Lily who prompted Ms. Montgomery to inquire about the reason for the early departure. Ms. Montgomery again contacted Ms. Lily when Ms. Cooper walked off the job. On July 30, 2019, Ms. Cooper called the workplace and spoke to Ms. Lily. Ms. Cooper asked whether she still had a job. Ms. Lily told Ms. Cooper that the employer considered Ms. Cooper to have abandoned the employment when she walked off the job. The employer's written work rules required that employees were prohibited from leaving work early without authorization.

Ms. Cooper established an original claim for benefits that was effective August 4, 2019 and received \$708.00 in benefits for the four weeks between August 4, 2019 and August 31, 2019. Cracker Barrel is the sole base period employer.

On August 19, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Cooper's separation from the employment. Ms. Cooper participated in fact-finding interview and provided a verbal statement wherein she intentionally misled the deputy. Ms. Cooper told the deputy that Ms. Montgomery had told her not to come back, which was untrue. Ms. Cooper told the deputy she had left due to a headache and in response to customer complaints, when Ms. Cooper had mentioned no such bases at the time of her unauthorized early departure. The employer's representative of record, Thomas & Company, provided a written statement for the fact-finding interview in lieu of participating in the fact-finding interview telephone call. The statement provided dates of employment and accurately set forth the facts surrounding Ms. Cooper's July 29, 2019 walk-off.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

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.

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.

The evidence in the record establishes that Ms. Cooper voluntarily quit the employment without good cause attributable to the employer when Ms. Cooper elected to walk off the job rather than perform her regular duties as directed. Ms. Cooper refused to provide a reason for her early departure. Before she left the employer gave her a specific warning that the unauthorized early departure would be deemed job abandonment. In that context, Ms. Cooper's walk-off demonstrated an intention to sever the employment and constituted overt action demonstration such intention. Ms. Cooper is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Cooper must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Cooper received \$708.00 in benefits for the four weeks between August 4, 2019 and August 31, 2019, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Cooper received constitute an overpayment of benefits.

Iowa Administrative Code rule 871-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(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 unrebutted 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.

The employer satisfied the fact-finding interview participation requirement. The written statement the employer provided for the fact-finding interview very accurately stated the relevant and material details surrounding the separation from the employment. The statement would have been sufficient, absent rebuttal, to secure a decision in the employer's favor in connection with the fact-finding interview. Even if the employer had not satisfied the participation requirement, the evidence establishes that Ms. Cooper intentionally misled the deputy through her statement at the fact-finding interview. Ms. Cooper is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The August 20, 2019, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective July 29, 2019. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$708.00 benefits for four weeks between August 4, 2019 and August 31, 2019. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs