

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEYRON D COMBS

Claimant

BORDER FOODS OF IOWA LLC

Employer

APPEAL 21A-UI-20215-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/11/21

Claimant: Respondent (2R)

Iowa Code §96.5(2)a-Discharge/Misconduct

Iowa Code §96.5(1)- Voluntary Quit

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 September 13, 2021, the employer/appellant filed an appeal from the September 3, 2021, (reference 02) unemployment insurance decision that allowed benefits based on claimant being discharged and the employer failing to furnish any information to the contrary. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2021. Claimant did not register a number to participate. Employer participated through District Manager, Laurie Martinez. Hearing Coordinator, Elaine Steele, was called as a witness. Exhibit 1 was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 24, 2020. Claimant last worked as a full-time team member. Claimant was separated from employment on August 10, 2021, when he failed to show up for work three days in a row without calling in.

The employer has an attendance policy which in relevant part states: "If you fail to report to work and do not give your manager advanced notice you will be considered to have voluntarily resigned your employment with the company. Exceptions for special circumstances will be made at the company discretion." (Exhibit 1, pg. 3).

Claimant last worked on April 7, 2021. (Exhibit 1, pg. 2). The claimant was scheduled to work April 8, 2021, April 9, 2021, April 10, 2021, April 11, 2021 and April 12, 2021. (Exhibit 1, pg. 1). The claimant did not show up for work or call into work any of the days. The claimant has not attempted to return to work with the employer. The employer had continuing work available for claimant if he would have showed up for work.

During claimant's May 3, 2020 claim, claimant received \$88.00 per week in weekly benefits. Claimant received \$226.00 in weekly benefits for his July 11, 2021 claim. Claimant received \$3,818.00 in regular unemployment benefits that he was not entitled to receive.

The claimant reported on his weekly unemployment filings that he earned no wages from the week ending August 29, 2020 through week ending April 10, 2021. In Wage-A the employer is noted to have paid claimant \$975.00 in the 3rd quarter of 2020; \$5,207.00 in the 4th quarter of 2020; \$4,374.00 in the 1st quarter of 2021; and \$1,380.00 in the 2nd quarter of 2021.

Claimant received Federal Pandemic Unemployment Compensation (FPUC) however, that issue was not noticed on the hearing and a decision regarding claimant being overpaid FPUC has not been decided.

The employer was not notified of a fact-finding interview with Iowa Workforce Development and did not receive a questionnaire. The employer submitted their policy with their protest.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In this case, claimant had an intention to quit and carried out that intention by failing to come to work for any further scheduled shifts. 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 (Ia. Dist. Ct. App. 1973). There was no reason given by the claimant for her voluntarily quitting her employment. As such, claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied. Because benefits are denied, the issue of overpayment and chargeability must be analyzed.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any

employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining

unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant’s separation was disqualifying, benefits were paid to which he 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 those benefits. The administrative law judge finds that claimant knowingly misrepresented the facts of the case on his response to the fact-finding questionnaire and as a result he must repay the benefits he received.

The employer did not participate in a fact-finding however they were not contacted to participate in a fact-finding interview and they did not receive a fact-finding questionnaire. They were unaware a decision was being made until they received the representative’s decision. As a result the employer’s account shall not be charged.

DECISION:

The September 3, 2021 (reference 02) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits of \$3,818.00 between week ending April 10, 2021 and October 9, 2021 and is obligated to repay the agency those benefits. The employer did not participate in the fact-finding however they were not called to participate in a fact-finding interview and they did not receive a fact-finding questionnaire. As a result the employer’s account shall not be charged.

REMAND:

The issue of whether claimant reported his wages on his weekly unemployment claims as set forth in the findings of fact is remanded to the Fraud and Integrity Bureau for an initial investigation and determination.

The issue of whether claimant has been overpaid FPUC benefits as set forth in the findings of fact is remanded to the Benefits Bureau for an initial investigation and determination.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 2, 2021
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.