IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

JESSICA S PETERSON
Claimant

OTTELINE SHOULTZ
Employer

APPEAL NO: 14A-UI-09224-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/10/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.25(2) – Voluntary Quit to Move
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 29, 2014, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 25, 2014. The claimant participated in the hearing. Judy Valentine-Parsons, Durable Power of Attorney for Ms. Otteline Shoultz; Brenda Valentine, Caregiver/part-time scheduler; and Georgia Barnes, CNA/part-time scheduler; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment to move to another state.

FINDINGS OF FACT

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time caretaker for Otteline Shoultz from October 15, 2013 to August 8, 2014. The claimant and approximately five other employees took turns providing care for Ms. Shoultz in her home in Unionville, Missouri.

At the time of hire the claimant was told she had to work one weekend per month but failed to work Sundays. She would write her name on the schedule for her required Sundays but then either call in to say she would not be at work or text her co-workers to see if one of them would cover her Sundays. She never worked a Sunday shift. The employer eventually told her in May 2014 not to write her name on the schedule if she was not going to work because it was too difficult for the other employees, who all held other jobs as well, to juggle their schedules at the last minute to cover for the claimant.

The claimant became engaged and notified the employer she planned to move to Bloomfield or Ottumwa. She and her fiancé looked for housing over a period of several months and the claimant told other employees and the employer she did not want to drive from Ottumwa to Unionville, an approximate one-hour trip one way, for $8.00 per hour, but said she would work until she moved. The employer indicated she understood because the price of gas was high

and it was a long trip, especially in inclement weather. The claimant planned to look for other work in Ottumwa so she could be closer to her children, who were enrolled in school in Ottumwa.

On August 10, 2014 the claimant called the employer and notified her she was moving. The employer said winter was coming and she had heard the claimant did not want to drive that distance for $8.00 per hour. The employer agreed it might be better for the claimant to find a job closer to home and the claimant said, “Yes. Sure.” She did not say anything about continuing to work for the employer and the employer believed she planned to leave her employment when she moved and she had just moved. Consequently, the employer believed the claimant voluntarily quit her job.

If the claimant had told the employer she wanted to continue her employment she would have been allowed to do so although the employer stated she would have needed to work her weekends and not put her name down on the schedule and then call or text that she could not work Sundays. The employer hired two new employees to replace the claimant after she left.

The claimant has claimed and received unemployment insurance benefits in the amount of $1,218.00 since her separation from this employer.

The employer personally participated in the fact-finding interview through the statements of Judy Valentine-Parsons, Durable Power of Attorney for her mother, the employer, Otteline Shoultz.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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 Admin. Code r. 871-24.25(2) 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 § 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 § 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:
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> (2) The claimant moved to a different locality.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In order for benefits to be allowed, the reason for leaving must be due to unlawful, intolerable or detrimental working conditions created by the employer.

In this case, the claimant moved to Bloomfield, which is at least one hour away from the employer's worksite. She notified the employer well in advance of her plans and kept it apprised of her plans through the spring and summer months. She told the employer and other employees she did not want to drive that far for $8.00 per hour and they discussed the fact that the drive would be difficult in the winter months. The employer believed the claimant was leaving her employment once she secured a new house in the Ottumwa area and throughout their many discussions about the situation the claimant never disabused the employer of the notion she was voluntarily leaving her employment. The employer did have continuing work available for the claimant had she not chosen to move and leave her job.

While the claimant's decision to quit to move to another area was based upon good personal reasons, she has not demonstrated a good-cause reason attributable to the employer for leaving. (Emphasis added). Therefore, benefits must be denied.

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.
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> (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.

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. 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Judy Valentine-Parsons. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of $1,218.00.

DECISION:

The August 29, 2014, reference 03, decision is reversed. The claimant voluntarily left her 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 is overpaid benefits in the amount of $1,218.00.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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