

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATASHA C BARKHAUSEN
Claimant

APPEAL NO. 15A-UI-03770-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WARTBURG COLLEGE
Employer

OC: 03/01/15
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 March 17, 2015, 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 an Agency conclusion that the claimant's November 9, 2014 voluntary quit was for good cause attributable to the employer. After due notice was issued, a hearing was held on April 30, 2015. Claimant Natasha Barkhausen participated. Jamie Holloway represented the employer and presented additional testimony through Margaret Empie. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay 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: The claimant was employed by Wartburg College as a full-time cook from 2004 until November 3, 2014 when she voluntarily quit in response to the employer's denial of the claimant's untimely request for time off. The claimant had purchased plane tickets for a vacation trip without first requesting the time off. At the time the claimant requested the time off, the upcoming schedule had already been posted. The claimant knew that requests for time off had to be made before the schedule was posted.

Shortly before the claimant quit the employment, she had sent a text message to supervisor to indicate that she was not going to appear for a scheduled Sunday shift because she wanted to work on her house. The text message was sent on the same day as the requested day off. The claimant knew that not appearing for the shift would leave the employer short-staffed.

The employer had to prepare meals for several hundred students. The supervisor replied that the claimant needed to work her shift as scheduled. The claimant elected not to appear for the shift. A supervisor spoke to the claimant upon the claimant's return to work about the need to appear for scheduled shifts and to follow the procedure for requesting time off. The claimant quit the employment before the employer could issue a reprimand regarding the unexcused absence from the Sunday shift.

At the time the claimant notified the employer that she was quitting the employment, the employer tried to persuade the claimant to reconsider. The claimant declined to reconsider her decision. The employer then asked for a two-week notice. The claimant declined to provide a notice period and indicating she was quitting that same day. The claimant quit in the middle of the shift after signing a resignation memo. The claimant stopped at the employer's human resources office to indicate that she had just quit and to request COBRA materials.

The claimant established a claim for benefits that was effective March 1, 2015 and received \$1350 in benefits for the five-week period of March 1, 2015 through April 4, 2015.

The employer participated in the March 12, 2015 fact-finding interview through Jamie Holloway, Human Resources Director, who provided an oral statement and submitted a copy of the resignation memo for the proceeding.

REASONING AND CONCLUSIONS OF LAW:

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(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 § 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:

(25) The claimant left to take a vacation.

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 871 IAC 24.25.

The evidence in the record indicates that the claimant voluntarily quit for personal reasons and not for good cause attributable to the employer. The claimant quit after the employer reasonably denied her untimely request for time off so she could go on vacation. The claimant was a long-term employee and was well familiar with the employer's time off request

requirements and the employer's responsibility to feed several hundred board-contract students. The claimant quit after the claimant made an untimely request for time off from a scheduled Sunday shift, after the employer reasonably refused the request, and after the claimant elected to absent anyway. The claimant has failed to present any evidence to prove intolerable or detrimental working conditions and the evidence in the record does not establish any such conditions. Because the claimant's voluntarily quit was without good cause attributable to the employer, the claimant is disqualified for benefits until 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 employer's account will not be charged for any benefits to be paid to the claimant subsequent to the entry of this decision.

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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1350 in benefits for the five-week period of March 1, 2015 through April 4, 2015.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits already paid to the claimant to the extent the law allows in light of the employer's status as a "reimbursable" employer.

DECISION:

The March 17, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment on November 3, 2014; without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant subsequent to the entry of this decision. The claimant was overpaid \$1350 in benefits for the five-week period of March 1, 2015 through April 4, 2015. The claimant must repay that amount. The employer's account will be relieved of liability for benefits already paid to the claimant to the extent the law allows in light of the employer's status as a "reimbursable" employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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