

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRUCE A JOHNSTON
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL NO. 15A-UI-03563-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/15/15
Claimant: Respondent (2R)**

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 11, 2015, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 2, 2015. Claimant participated. Employer participated by Kevin Mallison and Tim Mason. Employer's Exhibit Three was admitted into evidence.

ISSUES:

The issue in this matter is whether claimant quit for good cause attributable to employer.

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 12, 2015. Claimant worked as a delivery driver for employer. On the last day of claimant working for employer, he was asked to deliver an item at or around 1:20 p.m. Claimant completed that delivery and returned to the shop at or around 1:42 p.m. Claimant had a daily delivery he was to do at 2:00 p.m. When claimant returned from an earlier delivery, his 2:00 p.m. delivery had been given to another delivery driver. Claimant was paid by the hour and not by the delivery, so not doing the 2:00 p.m. delivery did not adversely affect his hours worked or his pay.

Claimant stated that this act was the last in a long line of harassments he had endured at the hands of his manager. Six months earlier claimant told a supervisor that he had tweaked his back, but did not want to make a big deal of it. Claimant's manager found out about the

situation and had claimant fill out paperwork on his discomfort. Claimant felt bad about doing this so he did not attempt to proceed with a potential worker's compensation case.

Claimant's manager also bothered claimant when claimant picked up five batteries that were not wanted by a customer. Manager placed these batteries back in stock to be resold. Claimant is not involved with inventory control in any way, but felt it wrong and unethical to place batteries back on the shelf. Claimant had no idea of whether the batteries were in like-new condition or not.

After claimant's delivery was taken by another driver on February 12, 2015, claimant put his keys down and walked off the job. Claimant made no effort to inform employer prior to his leaving or after any of the alleged incidents.

Employer stated that he did not participate in fact finding in this matter.

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 Code § 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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.

871 IAC 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 § 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 § 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 § 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 § 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 § 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 § 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was upset that employer had given his normal delivery to another driver.

Where a claimant gives numerous reasons for leaving employment Iowa Workforce is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Here claimant gave multiple reasons that combined to lead to his quitting. None of the reasons individually would give rise to quitting, and in consort the various reasons also do not rise to the level of giving claimant good cause to quit that is attributable to employer.

“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. Industrial Relations Commission, 277 So.2d 827 (Fla. App. 1973). Each case must turn around its own facts. Wolfe v. IUCC, 232 Iowa 1254 7 N.W.2d 799 (Iowa 1943). The facts which lead to the job separation are not those that adversely affected claimant’s job in any way. As such, they do not constitute good cause for ending his employment such that claimant should be eligible for unemployment benefits.

The overpayment issue remanded to the fact finder to determine the amount of overpayment.

The issue of employer participation was addressed. Employer did not substantially participate in fact finding. As such, employers account will be charged for unemployment benefits given to claimant.

DECISION:

The decision of the representative dated March 11, 2015, reference 01, is reversed and remanded to the fact finder on the issue of overpayment. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css