

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAX STEEGE**  
Claimant

**APPEAL NO: 19A-UI-09835-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AABLE PEST CONTROL INC**  
Employer

**OC: 11/10/19**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 2, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 9, 2020. The claimant participated in the hearing. Lori Price, Operations Manager and Mike Price, Owner/President, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time route technician for Aable Pest Control from August 19, 2014 to October 30, 2019. He voluntarily left his employment because he needed to care for his ill wife.

On October 22, 2019, Service Manager Mark Willmsen drove to the claimant's location to give him a written warning and discovered the claimant had his wife in his company truck. Mr. Willmsen told the claimant he could not have his wife ride with him because of liability issues and because the employer's handbook specifically prohibits any non-employee from riding in the truck. The claimant stated he had no one to care for his wife who has Atypical Parkinson's disease and cannot be left alone. His daughter previously cared for the claimant's wife but was no longer able to do so. The claimant was absent on 57 occasions in 2019 the majority of which were to care for his wife.

The claimant did not call or report for work October 23, 24, 25, 28 or 29, 2019. Owner Mike Price was out of town the week of October 21, 2019, and learned of the situation with the claimant when he returned. He called the claimant October 30, 2019, and the claimant asked if he could use his own vehicle to perform his job so he could take his wife with him to avoid the liability issue but the employer said he could not. Mr. Price told the claimant he thought he

abandoned his job because of the no-call/no-show absences and asked the claimant why he did not report for work and the claimant explained he did not have anyone to care for his wife. The parties agreed there was no choice but to “part ways” and the claimant’s employment ended.

The claimant has claimed and received unemployment insurance benefits in the amount of \$3,624.00 for the eight weeks ending January 4, 2020.

The employer participated personally in the fact-finding interview through the statements of Owner Mike Price; Operations Manager Lori Price; Service Manager Mark Willmsen; and Branch Manager Tony Wright.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

In this case the claimant did not want to leave his employment but had no one to care for his ailing wife and consequently he initiated the separation leading to the conclusion he voluntarily quit his employment rather than that he was terminated. While the claimant had good personal reasons for leaving his job, those reasons were not attributable to the employer as required by Iowa law before a voluntary quit results in unemployment insurance benefits for the claimant. 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.

(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 requires benefits be recovered from a claimant who receives benefits and is later denied 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 section 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 benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 section 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 benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for benefits paid.

**DECISION:**

The December 2, 2019, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$3,624.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn