

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN C ROSS
Claimant

APPEAL NO: 18A-UI-07761-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLIS INC
Employer

OC: 06/24/18
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 12, 2018, 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 August 8, 2018. The claimant participated in the hearing. Deb Bianchi, Human Resources Manager and Lance Duncan, Supervisor, 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 fabrication employee for Collis Inc. from October 30, 2017 to June 19, 2018. He voluntarily left his employment due to dissatisfaction with the work.

The claimant worked third shift as a powder coat employee. The employer eliminated the powder coat position on third shift March 19, 2018, and the claimant was working as a fabricator since that date. He was having some problems with co-workers on third shift and wanted to work as a powder coat worker again so he requested to transfer to first shift. The employer granted the claimant's request. On June 19, 2018, the claimant's second day on first shift, he notified the employer he was quitting and left his employment because he was dissatisfied with the having to rotate jobs and he did not have child care. The claimant testified he is a single parent and did not have child care for first shift and was upset because he was no longer a backup group lead when he moved to first shift so he was not eligible for the \$14.23 he was paid when he worked as a group lead. The claimant worked as a group lead for one week last fall and on January 29, February 15 and February 26, 2018.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,278.00 for the six weeks ending August 4, 2018.

The employer did not participate in the fact-finding interview in this matter.

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 § 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.

The claimant was working fabrication on third shift since March 19, 2018. He did not like that work and was experiencing issues with other employees and requested a move to first shift where he could work as a powder coater again. In choosing to move to first shift, the claimant gave up his position as backup group lead and the extra wages that he earned when he filled in for his group lead, although he only worked as a back-up three days in 2018. The claimant worked first shift for one day before quitting because he did not have childcare. The claimant knew his potential childcare provider worked days when he requested first shift. The claimant's move to first shift and subsequent unemployment was self-inflicted. He asked to move to first shift because he was dissatisfied with the work and had issues with some of his co-workers on third shift but he did not have childcare for his requested first shift position. Under these circumstances, the administrative law judge cannot conclude the claimant's voluntary leaving was for good cause attributable to the employer as that term is defined by Iowa law. 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 employer did not participate in the fact-finding interview. Consequently, the claimant's overpayment of benefits, in the amount of \$1,278.00 for the six weeks ending August 4, 2018, is waived as to the claimant and that amount shall be charged to the employer's account.

DECISION:

The July 12, 2018, 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 did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment, in the amount of \$1,278.00 for the six weeks ending August 4, 2018, is waived as to the claimant and that amount shall be charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn