IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANGELA HILDRETH
Claimant

THE IOWA CLINIC PC
Employer

APPEAL NO: 15A-UI-11454-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/13/15
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 7, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 29, 2015. The claimant participated in the hearing. Marian Klein, Employment Coordinator Human Resources, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment for 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 biller/coder for The Iowa Clinic from December 16, 2013 to May 28, 2015. She submitted her two-week resignation notice May 13, 2015, with an effective date of May 28, 2015. The claimant indicated on her notice she was leaving for personal reasons.

The claimant believes she hurt her back in January 2014, but did not report the injury to the employer until approximately one year after the injury. She sought treatment from her own doctor sometime in January 2015, and was told she needed to go to physical therapy. The claimant's doctor told her she needed to get up and walk around every 30 to 60 minutes for 15 minutes. The claimant provided that note to her supervisor who told the claimant she could stand up but needed to stay at her desk. The claimant did not go to human resources or anyone with more authority than her supervisor but instead went back to her doctor and he

wrote a more specific note, which the employer followed. She did not complete any worker's compensation paperwork until the spring of 2015 at which time she was sent to Dr. Hawk, the employer's worker's compensation doctor. The claimant applied for and was granted intermittent Family and Medical Leave (FML) effective April 17, 2015.

One day during the spring of 2015 the claimant was experiencing severe back pain and Dr. Hawk was not in the office that day. She left work early and sent an email to her supervisor informing her she was leaving work because of her back pain. She also asked the worker's compensation clerk if she could see another physician in Dr. Hawk's office and was told she could do so but later received a written reprimand (no date provided) for leaving work early and was told she could only see Dr. Hawk. The warning was for attendance issues. The claimant had accumulated six absences, two of which were due to her back problems. She saw her own physician and Dr. Hawk a total of two times each. Dr. Hawk told the claimant it would be better if she had a stand up desk but would not put that in writing because he said the employer would not abide by that restriction. He did not place any other restrictions on the claimant. He also told her she did not need to continue physical therapy and should follow up with her own doctor for a vitamin D deficiency test.

The claimant testified that she decided to submit her resignation notice after she received the written warning for attendance because she was afraid she would receive another reprimand. The employer has no record of any warnings issued to the claimant. She stated the other factors that led to her decision to resign her position were that she was still experiencing back pain and because she felt other employees in the office were resentful and critical about her FML absences. She testified that co-workers would stop talking when she came in the room and one co-worker asked her where she went when she left her desk for her 15-minute walking/stretching sessions as prescribed by her physician.

The claimant has claimed and received unemployment insurance benefits in the amount of $2,160.00 for the six weeks ending October 24, 2015.

The employer participated personally in the fact-finding interview through the statements of Human Resources Coordinator Marian Klein.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons 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. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

In this case, the claimant stated she resigned because she feared receiving another written warning for attendance issues. She could not provide the date of the written warning, however, and the employer has no record indicating it issued any type of warning to the claimant. The claimant was on intermittent FML which is in place to protect her job. There is no evidence the claimant's job was in any jeopardy due to her absences or use of FML.

The claimant also cited back pain as well as criticism and questions from her co-workers about her FML absences and frequent breaks as required by her physician to stretch her back. It is not necessarily unusual that co-workers would wonder why the claimant received several breaks throughout the day and feel she was not carrying her share of the workload when they did not receive the same number of breaks and the employer cannot divulge the claimant's medical situation without violating her right to confidentiality. When an employee is in a situation that sets her apart from her co-workers there are bound to be questions and unfortunate resentment in some cases. While that was undoubtedly uncomfortable for the claimant, the situations with her co-workers as described by the claimant do not rise to the level of intolerable and detrimental working conditions as those terms are defined by Iowa law.

The claimant also asserts she quit due to her back pain that she believes started shortly after she began her last position with the employer as a biller/sorter and was required to lift several heavy bags of money every day. While that may be the case, the claimant waited at least one year before telling the employer she believed she sustained a back injury while at work. She sought treatment from her primary care physician before she reported the situation to the employer but waited approximately one year before seeking treatment from her doctor as well. When she did tell the employer about her injury, it took the appropriate steps to respond to her complaint, beginning with sending her to Dr. Hawk, who released her from his care after two visits, and following the instructions the claimant's own physician set out for her in allowing her a 15-minute break after 30 to 60 minutes of work.

Under these circumstances, the administrative law judge cannot conclude the claimant's leaving was for unlawful, intolerable or detrimental working conditions as those terms are 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 § 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 will not be charged for benefits paid.

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 Human Resources Coordinator Marian Klein. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of $2,160.00.

DECISION:

The October 7, 2015, reference 02, 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 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 $2,160.00 for the six weeks ending October 24, 2015.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/pjs