

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DESTINEE UVALLE

Claimant

APPEAL NO. 16A-UI-13284-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC

Employer

OC: 02/07/16

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 December 9, 2016, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 6, 2017. Employer participated by Jeanenne Kinnetz and Jenna Johnson. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits 1-3 were admitted into evidence.

ISSUES:

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 October 17, 2016. Employer discharged claimant on October 20, 2016 because claimant did not sign and return probation documentation within three days of the issuance of the documentation. Said probationary documentation states that the lack of signing and returning the probation documents within three days will be determined as a voluntary quit.

Claimant received a first warning for her excessive absenteeism and tardiness on October 17, 2016, and the next day she received a second warning as she was a no call / no show for work on that date. The warnings referred to claimant's extended probationary period, and the second warning explained that claimant's rate of pay would be reduced as this was an added probation. (Employer explained that probations could reduce the rate of pay of employees in the employee handbook, which the claimant received and was quizzed on at the time of her hire.) The

warning was sent to the claimant via email. Claimant acknowledged receipt of the emails during her conversation with employer on October 18, 2016. Said probation stated that claimant must respond to the probationary extension email within three days of notice of the warning. Claimant did not send in a response email. Employer stated that if no response were received, employer would find that to be a voluntary quit.

It is unknown if claimant has received unemployment benefits in this matter as claimant did not participate in the hearing.

Employer did substantially participate in fact finding in this matter by employer's sharing of information surrounding the job separation on the fact finding interview.

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)a-b, 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) (a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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.

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 un rebutted 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 administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship by not responding as requested to the email she received concerning her probationary period extension.

Claimant knew or should have known that a condition of her employment would be the reduction of wages if claimant were to be placed on probation. As these conditions were set out initially, they cannot be considered a change of contract. Therefore, claimant's quit would not be with good cause attributable to employer.

The overpayment issue is remanded to the fact finder as claimant did not participate in the hearing so it is unknown whether claimant has been overpaid in this matter.

The issue of employer participation was addressed. Employer did substantially participate in fact finding such that employer's account will not be charged in this matter.

DECISION:

The decision of the representative dated December 9, 2016, reference 05, is reversed and remanded to the fact finder to determine the amount of overpayment received by claimant, if any. Employer shall not be held responsible for any overpayments received by claimant as employer substantially participated in fact finding. 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/rvs