

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARINA M SOLIS

Claimant

APPEAL 22A-UI-06762-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 02/13/22

Claimant: Appellant (2)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.3(7) - Overpayment
Iowa Admin. Code r. 871-24.10 - Employer Participation in Fact Finding
Iowa Admin. Code r. 871-24.25(37) - VQ - Resignation

STATEMENT OF THE CASE:

Employer/Appellant, Casey's Marketing Company, filed an appeal from the March 4, 2022, (reference 01) unemployment insurance decision that granted benefits based upon a February 16, 2022, dismissal that the record failed to show willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2022. Claimant, Carina Solis, failed to participate. Employer participated through Michelle Benton, district supervisor. Judicial notice was taken of the administrative record, including DBRO, KFFD, and SIDES.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Was the claimant overpaid benefits?

Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full-time with a varied schedule as a store manager, starting February 2, 2017. Her last day worked was February 16, 2022. She was separated from employment on February 16, 2022, when she voluntarily quit.

District supervisor, Michelle Benton and another district supervisor met with claimant on February 16, 2022. They discussed claimant having filled out an employee survey for all of her employees using their employee identification number prior to claimant going on vacation instead of her employees doing the survey themselves. Ms. Benton asked claimant why she would do that, being advised it was easier for claimant to do that than have each employee do the survey. Ms.

Benton asked claimant to the effect of you know that is against company policy, with claimant responding in the affirmative. Claimant further stated that she would just go ahead and give Ms. Benton her keys now and that she's just done and that she'll go. Ms. Benton told her ok and she should collect her things then which claimant did and left.

While Ms. Benton was likely going to terminate claimant, prior to that happening, claimant said she'd turn in her keys, she's done, she'll go, she collected her belongings and left the store. Claimant quit, likely due to her belief that she was going to be fired. However, employer had not gotten to the point of advising her she was being discharged from employment, so with her resigning, employer accepted her resignation.

Records show claimant has received \$4,734.00 in benefits on this claim. Her weekly benefit amount is \$526.00. Employer had no knowledge whether they participated in a phone call or submitted documents for fact finding. KFFD shows no one participated in the phone interview on behalf of employer and information was found in SIDES regarding information employer submitted for fact finding, therefore, per the definitions in Iowa Admin. Code r. 871-24.10(1), employer did participate in fact finding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was a voluntary quit without good cause attributable to the employer.

Iowa Code section 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. 871-24.25(37) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant was in a meeting with two district supervisors and having admitted that her conduct was in violation of company policy, claimant voluntarily quit, stating she'll turn over her keys, she's done and she'll go. Employer accepted her resignation, telling her to collect her belongings and leave. While employer was going to discharge claimant for misconduct, they had not gotten to that point yet, so there is no Iowa Admin. Code r. 871-24.26(21) involved (compelled to resign when given the choice to resign or be discharged).

Claimant voluntarily quit work on February 16, 2022, orally resigning. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The next issue is whether claimant has been overpaid benefits. 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 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.

Because claimant's separation was disqualifying, any benefits paid on the claim would be benefits to which she was not entitled. The unemployment insurance law provides 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. The law also states an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits..." Iowa Code § 96.3(7)(b)(1)(a).

Claimant received \$4,734.00 in benefits on this claim. Employer did participate in the fact-finding by submitting information. Claimant is disqualified as of the benefit week ending 02/19/2022. The overpayment occurred while she was disqualified. Because employer participated in fact finding, claimant does have to repay the overpayment of benefits and employer shall not be charged.

DECISION:

The March 4, 2022, (reference 01) unemployment insurance decision is **REVERSED**. Claimant voluntarily quit without good cause attributable to employer on 02/16/2022. 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. Claimant has been overpaid unemployment insurance benefits in the amount of \$4,734.00 that do have to be repaid as

employer adequately participate in fact finding and therefore employer shall not charge.



Darrin T. Hamilton
Administrative Law Judge

May 6, 2022

Decision Dated and Mailed

dh/ac

Note to Employer:

Employer provided an updated address during the hearing, by changing the address from Illinois to Iowa. Both addresses are on the cover page of this decision. Employer is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information should they want mail sent to the Iowa address only and not the Illinois address or to use both addresses, so that their information can be updated within IWD's systems and not just on this one printed decision.