

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WHITNEY M LONNING
Claimant

PLANNED PARENTHOOD NORTH CENTRA
Employer

APPEAL 19A-UI-08528-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/08/19
Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On October 22, 2019, the employer filed an appeal from the October 17, 2019, (reference 04) unemployment insurance decision that allowed benefits based on an untimely protest. The parties were properly notified about the hearing. A telephone hearing was scheduled for November 21, 2019. Because a decision could be made based on a review of the administrative record, no hearing was held.

ISSUES:

Is the protest timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant overpaid benefits?
Will the employer's account be charged?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of September 8, 2019. Iowa Workforce Development mailed two notices of claim to employer—one to its Des Moines address and the other to its St. Paul address. The response to the notice of claim was due by October 7, 2019.

When claimant filed the initial claim for benefits, she reported that she was discharged, making it what is called a "self-protesting" claim. Because of this report and possibly because employer's Des Moines office filed a timely protest (the administrative law judge was unable to locate one that was actually received by IWD in its records), a fact finding interview was scheduled for October 10, 2019, at 3:55 p.m. Employer participated.

On October 16, 2019, Iowa Workforce Development issued a reference 03 decision denying claimant benefits based on her separation from employment. The deadline to appeal the

decision fell on October 26, 2019, and claimant has not filed an appeal. The reference 03 decision states employer will not be charged for benefits.

On October 15, 2019, Iowa Workforce Development received a protest from employer's St. Paul office. On October 17, 2019, Iowa Workforce Development issued a reference 04 decision allowing claimant benefits based on an untimely protest and stating that employer's account could be charged.

On October 18, 2019, Iowa Workforce Development issued a summary decision. Summary decisions are sent to claimants only. The decision states:

You are not eligible to receive unemployment insurance benefits.

Explanation of Decision:

Each protest on your unemployment insurance claim has been determined separately and you have received a decision on each one. These separate decisions could cause confusion. This letter is a summary of those separate decisions. You have been disqualified from receiving benefits from 8/27/19 until you requalify by having worked in and been paid wages for insured work equal to ten (10) times your weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, the administrative law judge finds that the issue of whether employer filed a timely protest is moot.

Iowa Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed.

In this case, Iowa Workforce Development examined the claim and issued a decision disqualifying claimant from receiving benefits based on her separation from employment prior to receiving the late protest from employer's St. Paul office. In other words, IWD had already taken the action it would have taken upon receiving a timely protest from employer, so the issue of whether the protest was timely was a non-issue by the time the second protest was received on October 15, 2019. The issue is moot and will not be discussed further in this decision.

As noted in the reference 05 summary decision, the decision denying claimant benefits based upon a separation from employment controls.

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.

Iowa Code § 96.3(7)a-b 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 § 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 § 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 states pursuant to § 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 § 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 § 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 § 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 § 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 § 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.

In this case, claimant is disqualified from receiving benefits based on the decision that found claimant quit without good cause attributable to employer. Claimant has not received any benefits since filing this claim. Therefore, there is no issue regarding whether she was overpaid benefits.

Because claimant is disqualified from receiving benefits based on a separation from employment with employer, she will not receive any benefits until she requalifies by earning ten times her weekly benefit amount, and employer's account shall not be charged.

DECISION:

The October 17, 2019, (reference 04) unemployment insurance decision is modified in favor of employer. The issue of whether employer's protest is timely is moot. Claimant is disqualified from receiving benefits based on her separation from employment. 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. Employer's account (613626) shall not be charged.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

November 27, 2019
Decision Dated and Mailed

cal/scn