

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA ROBERTSON
Claimant

APPEAL NO. 14A-UI-03368-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 02/23/14
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Pilot Travel Centers, LLC filed a timely appeal from a representative's decision dated March 18, 2014, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 21, 2014. The claimant participated. The employer participated by Mr. Scott Epping, General Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Christina Robertson was employed by Pilot Travel Centers most recently from August 13, 2012 until December 25, 2013 when she voluntarily left employment. Ms. Robertson was employed as a full-time shift leader and was paid by the hour. Her immediate supervisor was the general manager, Scott Epping.

Ms. Robertson left her employment with Pilot Travel Centers on December 25, 2013 due to dissatisfaction with the requirement that she return to the facility that night with money that she had inadvertently taken with her when she completed her work shift. On that night Mr. Robertson had neglected to turn in cash that she had picked up from one source at the facility while performing her end-of-shift duties as a shift leader. After the claimant had traveled home, she discovered that she still had the money with her and telephoned the facility to explain the circumstances. The shift leader who was on duty, at that time, requested that Ms. Robertson return the money that night. Although Ms. Robertson disagreed with the decision requiring her to travel some distance back to the facility that night, she nevertheless complied. Upon arriving at the facility late at night with her boyfriend, the claimant expressed anger and dissatisfaction with the requirement that she drive back to the facility late at night. Employees present reported that Ms. Robertson's boyfriend loudly complained about the requirement that the claimant return with the money and was disruptive. The 11:00 p.m. until

7:00 a.m. shift manager had reported the incident at the time to the general manager who was at home. Ms. Robertson did not contact the general manager to explain the circumstances or to request that she be allowed to return the money the following workday. Ms. Robertson quit her job with Pilot Travel Centers by discontinuing to report for scheduled work after the claimant had failed to report for three consecutive workdays without any notification to the employer, the employer concluded that Ms. Robertson had quit her employment.

Prior to the final incident, Ms. Robertson had expressed dissatisfaction to the facility's general manager about the demeanor of two other shift leaders who Ms. Robertson was required to interact with while performing her duties. The claimant had complained that the elder shift leaders were negative towards her and had used cuss words and other inappropriate language in addressing Ms. Robertson. Based upon Ms. Robertson's complaints, the general manager addressed the complaints with the two other shift managers. Based upon statements made by the other shift managers, Mr. Epping concluded that the claimant had used the same or similar language and demeanor towards the other shift managers causing, in part, the disharmony between them.

During the short period of time that Ms. Robertson was assigned at her most recent job location, the claimant had requested to move back to her previous work location at Walcott, Iowa, because the distance to drive was too far and weather conditions made the problem more difficult. Ms. Robertson was aware of the work location when she had accepted the assignment at her most recent work location.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

871 IAC 24.25(6) and (30) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

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. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of an intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

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 33 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993). When a person voluntarily quits the employment due to dissatisfaction with the work environment or inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (6).

In the case at hand the evidence establishes that Ms. Robertson had difficulty in working with two other shift leaders at the most recent Pilot Travel Center where she had been assigned to work. During the short time that the claimant had been assigned to work at that location from November 18, 2013 until December 25, 2013, Ms. Robertson had informed the facility's general manager that the other shift managers had been rude to her and had used inappropriate language and at times had publically criticized her in the presence of other staff and customers. Although the claimant had complained she did not indicate that she was considering quitting her job for these reasons. The employer acted reasonably by immediately counseling the other two shift managers about the employer's work expectations. Based upon statements made by the other shift managers the general manager, reasonably concluded that Ms. Robertson had also engaged in similar conduct by using similar language and demeanor towards the other shift managers. After the claimant's initial complaint, Ms. Robertson did not go back to the general manager to complain that any unacceptable treatment by the shift managers was continuing.

The final incident that caused the claimant to leave her employment took place on the night of December 25, 2013. On that night Ms. Robertson had inadvertently taken cash home from the facility and had called back to report what had happened to the other December shift manager who was on duty. Although the claimant disagreed with the shift manager's directive to return to the facility with the funds, the evidence establishes that Ms. Robertson did not attempted to contact the general manager at home, although the other shift manager did so. When the claimant returned to the facility in the late-night hours she was angry about having to return to the facility to bring the money in, because she was scheduled to work a few hours later the following morning. The return of the money was acerbated by the conduct of Ms. Robertson's boyfriend who appears to have openly expressed his extreme anger and dissatisfaction about the incident. Ms. Robertson did not again report for work or notify the employer of any dissatisfactions or that she was quitting.

The administrative law judge concludes based upon the evidence in the record that the primary reason for the claimant quitting her employment was her dissatisfaction with the shift leader's decision on the night of December 25, 2013 to require her to return to the facility with money that she had inadvertently taken home. The claimant did not follow a reasonable course of action by contacting the general manager by telephone although the general manager was available and had been contacted by the other shift manager. While the claimant's reasons for leaving employment at that time may have been a good-cause reason from her personal

viewpoint, it was not a good-cause reason attributable to the employer. Reasonable alternatives were available to Ms. Robertson but she did not avail herself of them. The claimant did not contact the general manager that night nor later complain up the chain of command or through a company hotline about her most recent dissatisfaction. Because the claimant has not sustained her burden of proof in establishing that she left employment with good cause attributable to the employer unemployment insurance benefits are withheld.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$1,680.00 since filing a claim with an effective date of February 23, 2014 for the weeks ending March 1, 2014 through April 12, 2014. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal.

Iowa Code section 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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.

871 IAC 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 the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in

the fact-finding interview, if the claimant is obligated to repay the Agency the benefits she received and the employer's account shall not be charged.

DECISION:

The representative's decision dated March 18, 2014, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The claimant is liable to repay \$1,680.00 in overpayment of unemployment insurance benefits as the employer did participate in the fact finding in this matter. The employer's account shall not be charged.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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