

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELYN DEJESUS**  
Claimant

**APPEAL NO: 16A-UI-07293-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER SOLUTIONS  
STAFFING GROUP**  
Employer

**OC: 06/05/16**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 24, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on July 21, 2016. The claimant participated in the hearing. Emma Cropp, Staffing Manager and Sibley Mattson, Benefits Administrator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her employment with 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 customer service representative for Employer Solutions Staffing Group last assigned to Equifax from April 1, 2016 to June 8, 2016. She voluntarily left her employment by failing to return to work.

The claimant notified the client she would be gone from May 27 through June 3, 2016, because she had to take her daughter out of state. She was expected to return Monday, June 6, 2016, but did not show up for work or call the employer to report her absence. A member of the employer's staff attempted to call the claimant throughout the day June 6, 2016, but the claimant did not respond to his calls. The claimant did not call the employer or report for work June 7, 2016, either and the employer called her around 11:00 a.m. and notified her that usually two no-call no-show absences would be considered a voluntary quit but the client wanted the claimant to return to her assignment. The employer told the claimant she needed to report to her assignment as soon as possible and the claimant stated she needed to drop off her nephew and then would be in to work. She called the employer at 4:00 p.m. and said she could not make it to work and the employer determined she voluntarily quit her assignment.

On June 9, 2016, the claimant called the employer and was offered a new position at Quanex with hours from 7:00 a.m. to 3:00 p.m. but the claimant declined that offer. She told the employer she had an appointment June 13, 2016, and the employer instructed the claimant to call after her appointment but the claimant has not contacted the employer since June 9, 2016.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,194.00 for the six weeks ending July 16, 2016.

The employer did not participate in the fact-finding interview within the meaning of the law.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, 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.

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.

The claimant left May 27, 2016, to take her daughter out of state. The employer expected her to return to work June 6, 2016. Neither the employer nor the client told the claimant she would no longer have a position with Equifax if she took that time off but the claimant assumed she would lose her job. The claimant's assumption was not based on anything the employer did or said and the employer tried to contact the claimant June 6, 2016, to notify her that the client wanted her to continue in her position but the claimant did not answer her phone or return its calls. The employer called the claimant again June 7, 2016, to tell her the employer was holding her position if she reported for work sometime that day but the claimant was babysitting and could not find a substitute sitter. Because the claimant was never told her employment would be terminated if she went out of town, it was not reasonable for her to believe she could not return to work June 6, 2016.

Under these circumstances, the administrative law judge must conclude the claimant voluntarily left her employment without good cause attributable to the employer as that term is 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 section 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.

The employer did provide a written document to the Department prior to the fact-finding interview. That document described the claimant's employment from March 16 to March 17, 2015, instead of April 1, 2016 through June 8, 2016, however, and listed the employer as Remedy Intelligent Staffing rather than Employer Solutions Staffing Group. Additionally, the written document did not provide the name and telephone number of an employee with firsthand information to be contacted by the employer for rebuttal. The written documentation did not 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. Instead, the information submitted contained general conclusions without supporting detailed factual information about another claim with another employer. The employer did not participate in the fact-finding interview within the meaning of the law.

**DECISION:**

The June 24, 2016, reference 01, 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 did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits, in the amount of \$1,194.00 to date is waived as to the claimant. The employer's account shall be charged for the benefits paid to the claimant for the six weeks ending July 16, 2016.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs