

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD PEREZ
Claimant

APPEAL NO. 14A-UI-00614-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC L
Employer

OC: 12/15/13
Claimant: Respondent (2-R)

Section 96.5-1-a – Voluntary Quit

STATEMENT OF THE CASE:

Packers Sanitation Services, Inc. filed a timely appeal from a representative's decision dated January 14, 2014, reference 01, which held claimant eligible to receive benefits. After due notice was provided, a telephone hearing was held on February 10, 2014. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Juan Martinez, Site Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Richard Perez was employed by Packers Sanitation Services, Inc. from November 5, 2012 until December 2, 2013 when he left work with Packers Sanitation Services, Inc. to seek other employment. Mr. Perez was most recently employed as a full-time lead person and was being paid by the hour.

In October 2013, the claimant received a disciplinary demotion from his supervisory position in the company because of sexual harassment complaints against Mr. Perez by two female workers. Rather than discharge Mr. Perez, the employer elected to demote him to lead person where he would have less supervisory authority over other workers. Mr. Perez was aware of the reason for the disciplinary demotion and did not dispute it.

Mr. Perez last reported for work on November 12, 2013. Subsequently, he was involved in a non-work-related accident and was off work for medical reasons. Mr. Perez elected not to return to work on December 12, 2013 although he had been released by his physician to return and the company expected the claimant to report for work that day. Mr. Perez indicated that he

was seeking a new job at that time. Prior to leaving the claimant had not complained about his disciplinary demotion or indicate to the employer in any manner that he was considering quitting his employment for that reason. Work continued to be available to Mr. Perez at the time that he chose to leave his employment with Packers Sanitation Services, Inc.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes 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.

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). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Claimants are not required to give notice of 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).

Inasmuch as the evidence in the record establishes that the claimant did not give the employer an opportunity to resolve the complaints that he may have had before leaving, the separation was without good cause attributable to the employer. The claimant stated at the time of his leaving his intention was to find other employment. The claimant had accepted the disciplinary demotion that he had been given approximately two months before his leaving. There being no evidence to the contrary, the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Based upon the administrative record it does not appear that Mr. Perez has received unemployment insurance benefits, however, the issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the Claims Division for determination. If it is determined that there has been an overpayment, the claimant is liable to repay the overpayment as the employer participated in the fact finding in this matter.

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.

DECISION:

The representative's decision dated January 14, 2014, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid job insurance benefits is remanded to the Claims Division for determination. If it is determined that there is an overpayment, the claimant is liable to repay that amount because the employer participated in the fact finding.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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