

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBBIE VAIMAUGA
Claimant

APPEAL 20A-UI-01664-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

OC: 01/05/20
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

On February 24, 2020, AT&T Mobility Services LLC (employer) filed an appeal from the February 14, 2020 (reference 01) unemployment insurance decision that determined Debbie Vaimauga (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on March 11, 2020. The parties were properly notified of the hearing. Employer participated by Hearing Representative Caroline Semer. Attendance Manager China Kellam participated as a witness on behalf of employer. Claimant did not register a number for the hearing and did not participate.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record, including claimant's payment history on the unemployment insurance system and the fact-finding worksheet.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time customer service representative. Claimant's first day of employment was August 12, 2019. Claimant's immediate supervisor was Alisha Kearley. Claimant separated from employment on January 7, 2020. Claimant quit on that date.

Claimant told Team Manager Alisha Kearley in a text message dated January 7, 2020 that she was resigning. See Exhibit 1. Claimant had recently spoken with Kearley about her attendance. Claimant was close to being discharged based on employer's no-fault point system. Kearley informed claimant she could stay on with a final written warning. However, if she received any more points, she would be discharged. If she were discharged, she would not be eligible for

rehire. However, if she resigned, she would be eligible for rehire in six months. Claimant decided to resign rather than risk discharge due to future absences.

Claimant's most recent absences had been due to properly-reported illness. Claimant suffered from migraines. Employer was aware claimant's migraines were contributing to her attendance issues. Kellam had informed claimant she could bring in a doctor's note and request an accommodation. However, claimant did not do so.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$364.00 for a total of eight weeks, from the benefit week ending January 18, 2020 and continuing through the benefit week ending March 7, 2020. The total amount of benefits paid to date is \$2,912.00. Employer did not participate at the fact-finding hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 14, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

- d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

- (35)** The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
 - a. Obtain the advice of a licensed and practicing physician;

- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant decided to quit rather than continue to work under a final written warning. While the administrative law judge understands claimant very likely made this decision rather than risk being discharged in the future due to illness-related absences, these reasons do not constitute good cause attributable to employer. Claimant had the option to stay on but chose not to. She also had the option of presenting a doctor's note so that she could be accommodated by employer,

including likely not having illness-related absences count toward her attendance points. Claimant failed to do this. The administrative law judge also notes that claimant did not leave work based on the advice of a practicing physician. If she had done so and met the other requirements of applicable law, her quitting may have been with good cause.

Because the administrative law judge finds claimant voluntarily quit without good cause attributable to employer, she is disqualified from receiving benefits.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

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.

(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.

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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$364.00 for a total of eight weeks, from the benefit week ending January 18, 2020 and continuing through the benefit week ending March 7, 2020. The total amount of benefits paid to date is \$2,912.00. Because the administrative law judge now finds claimant is not eligible for benefits, she has been overpaid benefits in that amount.

However, because employer did not participate at the fact-finding hearing within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant.

DECISION:

The February 14, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant is not eligible for benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements. Claimant has been overpaid benefits in the amount of \$2,912.00. However, benefits shall not be recovered due to employer's failure to participate in the fact-finding hearing.

Andrew B. Duffelmeyer
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Decision Dated and Mailed

abd/rvs