

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE N MILLER
Claimant

APPEAL 15R-UI-13107-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POLARIS INDUSTRIES MANUF LLC
Employer

**OC: 09/20/15
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Employer filed an appeal from the October 6, 2015 (reference 01) unemployment insurance decision that allowed benefits, based upon the determination that the claimant voluntarily quit his employment with good cause attributable to the employer as he was subjected to detrimental working conditions. The parties were properly notified about the hearing. A telephone hearing was held on December 17, 2015. The claimant did participate. The employer participated through Human Resources Generalist Jennifer Lundquist. Employer's Exhibit One was previously received. Official notice was taken of the documents submitted for the fact-finding interview.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the Agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an assembler beginning August 1, 2014 and was separated from employment on July 30, 2015; when he quit. The claimant stated on his resignation form that the reason he quit was due to a "hostile work environment."

On July 20, 2015, the claimant failed a check back audit. He had failed six previous audits which resulted in written notification of the failed audit. On the afternoon of Friday, July 24, 2015, the claimant reported to Human Resources Generalist Jennifer Lundquist that he felt he was being harassed by the auditor. Lundquist explained the check back audit notification was not punitive in any way. She also offered him the opportunity to move to another line or department if he did not feel comfortable on his current line. The claimant declined.

On Monday, July 27, 2015, Lundquist began an investigation into the claimant's allegations of harassment and hostile work environment. She determined the auditor's conduct had been within the scope of her job duties and no harassment had occurred. However, the claimant had called in sick on July 27 and had the next two work days off for scheduled vacation. Lundquist was unable to report her findings to the claimant.

Claimant was feeling harassed by his supervisors for approximately six months. He couldn't take the pressures of the job anymore, and was not able to give human resources additional time to investigate and provide assistance to him. Claimant decided while he was on vacation in late July 2015 that he would be unable to return to work.

On July 30, 2015, the claimant reported to the Human Resources office and spoke with the Human Resources Administrator. He told her that he was quitting his position due to a hostile work environment and confirmed his reason on his written resignation which was effective that day.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,630 since filing a claim with an effective date of September 20, 2015; for the five weeks ending October 24, 2015. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal. Lundquist, a first-hand witness, intended to participate in the fact-finding interview; however, the employer's entire phone system was not functioning on the day of the fact-finding interview. The only information provided by the employer was through the SIDES online system which stated the claimant quit on July 30, 2015 for personal reasons.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25(21) and (22) provides:

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:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.26(4) provides:

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:

- (4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

The claimant reported to the employer he felt he was being harassed or subjected to a hostile work environment by the check back auditor. However, the auditor's conduct, as it was within the scope of her employment, did not create intolerable or detrimental working conditions. The claimant's supervisor's conduct was not objectively unreasonable. Human resources was in the process of addressing the issues claimant brought to their attention. The claimant's decision to quit because he did not agree with the failed check back audit is also not for a good cause reason attributable to the employer. Benefits must be denied.

Iowa Code § 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which he 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant did not receive the benefits due to fraud or will misrepresentation and the employer did not participate in the initial proceeding. The claimant cannot be held liable for the overpayment that has occurred.

The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In order to participate, the employer is required at a minimum to provide the date and the stated reason that the claimant voluntarily quit his employment. Iowa Admin. Code r. 871-24.10(1). In examining the SIDES information, the employer provided the date the claimant quit and stated the reason for the quit was “personal reasons.” The employer failed to adequately specify the exact reason for the claimant's decision to quit or provide any supporting documentation which it had in its possession. While Lundquist intended to participate, it is the employer's responsibility to have a telephone number and witness identified that can be reached for the fact-finding. Since the employer did not participate in the fact-finding interview the claimant is not obligated to repay to the agency the benefits he received and the employer's account shall be charged.

DECISION:

The October 6, 2015 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$1,630 and is not obligated to repay the Agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

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