

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE DELAVAN

Claimant

APPEAL NO: 17A-UI-00087-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 12/04/16

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 21, 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 January 26, 2017. The claimant participated in the hearing. Brandi Carr Human Resources Generalist; Robert Philibert, Professor of Psychiatry; and Mary Eggenburg, Benefits Specialist; 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 research assistant for The University of Iowa from July 23, 2015 to December 1, 2016. She voluntarily left her employment because she felt her employment would be terminated if she did not voluntarily quit.

On November 8, 2016, the claimant sent Supervisor Emma Papworth an email stating her current schedule no longer worked for her as she could no longer work evenings, weekends or long days on a regular basis. On November 14, 2016, Dr. Robert Philibert, Professor of Psychiatry, emailed the claimant and asked her to meet with him and Ms. Papworth. On November 15, 2016, the claimant responded she no longer wished to be contacted by Dr. Philibert or anyone connected with the lab and stated she would contact Human Resources Generalist Brandi Carr regarding her safety concerns and recent absences. Ms. Carr responded to the claimant and asked when the claimant could meet on November 16, 2016. The claimant replied that she was forced to add an inaccurate schedule to her time card. The claimant was a salaried rather than hourly employee. She also stated she would no longer be contacting Ms. Carr either. On November 16, 2016, Ms. Carr emailed the claimant and asked her to remain in contact with Dr. Philibert, Ms. Papworth and herself and the claimant replied that she felt she had no choice but to remove herself from the “unsafe and unacceptable working conditions” and her last day would be December 1, 2016. On November 17, 2016, Ms. Carr wrote to the claimant and accepted her resignation.

The claimant was upset because Dr. Philibert sent her an email November 15, 2016, accusing her of not being at work when she was actually performing a blood draw. He stated the claimant did not get things done when he was not watching her and then Ms. Papworth assigned her to work on a Saturday. She was also upset because she was scheduled to become an hourly employee December 1, 2016, and would have to clock in at her desk although that policy never went into effect.

The claimant has claimed and received unemployment insurance benefits in the amount of \$4,876.00 for the ten weeks ending February 11, 2017.

The employer participated personally in the fact-finding interview through the statements of Benefits Specialist Mary Eggenburg.

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.

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 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

“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 So.2d 827 (Florida App. 1973). The claimant told the employer she could no longer work the flexible schedule and stated the working environment was unsafe and unacceptable. She indicated she believed if she did not resign she would be “blackballed” or have negative comments placed in her personnel file but she never voiced any concerns to Ms. Carr as the human resources professional for her department or supplied any evidence that she was about to be discharged, blackballed or have negative comments placed in her personnel file. The claimant was also concerned about a proposed change to her status from salaried to hourly. However, that change has not taken effect to date.

Under these circumstances, the administrative law judge must conclude the claimant has not demonstrated that her leaving was for 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.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

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 has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Benefits Specialist Mary Eggenburg. Consequently, the claimant’s overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$4,876.00 for the ten weeks ending February 11, 2017.

DECISION:

The December 21, 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 personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$4,876.00 for the ten weeks ending February 11, 2017.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs