

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY OVERTON
Claimant

APPEAL NO: 14A-UI-09459-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BC LYND HOSPITALITY LLC
Employer

OC: 08/17/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 3, 2014, 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 November 3, 2014. The claimant participated in the hearing. Alicia Frieze, General Manager; Claudette Ward, Executive Housekeeper; and John Yerger, Human Resources Representative 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 housekeeping supervisor for BC Lynd Hospitality from May 26, 2013 to July 27, 2014. She voluntarily quit her job because she was “tired of all of the crap going on.” She was upset because when Executive Housekeeper Claudette Ward was not on-site the other housekeepers did not listen to her and also complained she was rude. The claimant had talked to Ms. Ward about some of the housekeepers acting angry because the claimant told them to clean more rooms when other housekeepers did not show up for work. Ms. Ward told the claimant to be a leader and give them orders after she became a supervisor a few months earlier. The claimant had the authority to issue verbal or written warnings to the housekeepers, who she stated would not take direction from her, but the claimant never used that as a tool.

On July 27, 2014, another housekeeping supervisor, Chelsea, walked out because a housekeeper “got in her face and yelled and screamed” at her when Chelsea tried to tell her to do something. The claimant walked out after Chelsea did because she could not “take it anymore and nothing was getting done or changing and the girls came and went as they pleased.”

Ms. Ward and General Manager Alicia Frieze testified the other housekeepers complained that the claimant took too many breaks instead of helping the housekeepers' clean rooms and strip beds.

Ms. Ward, with Ms. Frieze present, tried to call and text the claimant three or four times and left her voice mail messages after she left the note for Ms. Ward stating she quit and walked off the job but the claimant did not respond.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1335 since her separation from this employer.

The employer participated in the fact-finding hearing personally through the statements of John Yerger, Human Resources Representative.

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 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.

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.

"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). In this case, the claimant was unhappy with the housekeepers she supervised and felt they effectively gave her attitude while they felt she was rude. Ms. Ward told the claimant to show more leadership and to take charge when Ms. Ward was not there but the claimant chose not to do so and refused to use disciplinary action as a means to achieve the type of performance she needed to see from the housekeepers. Additionally, Ms. Ward talked to the claimant about her own performance in not taking so many breaks and helping the other housekeepers by pitching in to clean rooms and strip beds. Apparently, the claimant could have alleviated some of the issues she had if she chose to lead by example. 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 are denied.

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.

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 statement of Human Resources Representative John Yerger. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$1335.

DECISION:

The September 3, 2014, 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. Because the employer participated in the fact-finding interview the repayment of those benefits cannot be waived. The claimant is overpaid benefits in the amount of \$1,335.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css