

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHERLEE N PERDUE
Claimant

CENTRAL IOWA KFC INC
Employer

APPEAL 18A-UI-12148-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/18/18
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:

The employer filed an appeal from the December 7, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2019. Claimant did not participate. Employer participated through Area Supervisor Julie Mangold. Employer's Exhibits 1 through 8 were received into evidence.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 24, 2018. Claimant last worked as a part-time customer service team member. Claimant was separated from employment on October 6, 2018, when she voluntarily quit.

On September 10, 11, 14, and 15, claimant was a no call/no show for her scheduled shifts. Manager Maureen Graves met with claimant to discuss her no call/no shows. The employer has a policy in place which states two consecutive no call/no shows, will be considered a voluntary termination. (Exhibit 8). Claimant was given this policy upon her hire. (Exhibit 7). It is believed that Graves provided her with a write-up for being a no call/no show, but that another former manager, Dave, discarded the write-up. Claimant was taken off the schedule for a short period of time while disciplinary action was discussed among management, but was allowed to

return to work September 23, 2018. The last day claimant worked was September 28, 2018. Claimant did not show up to her next three scheduled shifts, October 3, 4, or 6, 2018 and did not call to report she would be absent from work. No one with the employer heard from claimant again after September 28 and it was presumed she had quit.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 18, 2018, but has not received any benefits to date. Mangold was available to participate in a fact finding interview regarding the separation on December 6, 2018, but had forgotten the files she needed to answer the fact-finder's questions. The fact finder determined claimant qualified for benefits.

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.

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(4) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Here, the employer's policy provides for separation after two consecutive no call/no shows. However, claimant was not discharged after her first two consecutive no call/no shows. Rather, she was taken off the schedule for a few days then placed back on the schedule. The last day claimant worked was September 28, 2018. Claimant missed her next three scheduled shifts. The employer assumed claimant had quit as it did not hear from her again. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy and failed to make any contact with the employer after the last shift on September 28, 2018, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

As claimant has not received any benefits to date, the issues of overpayment and participation are moot.

DECISION:

The December 7, 2018, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she is otherwise eligible. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs