

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MANUEL O ESPINOZA
Claimant

COSTCO WHOLESALE CORPORATION
Employer

APPEAL 22A-UI-08075-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/06/22
Claimant: Respondent (1)**

Iowa Code § 96.5(1) - Voluntary Quit
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
Iowa Admin. Code r. 871-24.26(4) - Intolerable working conditions

STATEMENT OF THE CASE:

The employer/appellant, Costco Wholesale Corporation, filed an appeal from the March 21, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon finding the December 20, 2021, voluntary quit was for detrimental conditions, establishing good cause attributable to employer. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for May 13, 2022. Claimant, Manuel Espinoza, did not participate. Employer participated through Tyler O'Dwyer, store general manager. Judicial notice was taken of the administrative file, including DBRO and KFFD. Employer's exhibit R-1 was admitted. Employer's other exhibit was not admitted as it was duplicative of R-2 and no proof of it being sent to claimant.

ISSUES:

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

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed full-time, with a varied schedule, as a pharmacy technician. Claimant's first day of work was May 8, 2015, with his last day worked being December 20, 2021. Claimant was separated from work on December 20, 2021, when they voluntarily quit work. See R-1 page 6. The resignation addresses claimant enjoying their position, but work was not going well. This was due to employer (Mr. O'Dwyer) not being supportive or compassionate, yelling at claimant, being unprofessional and rude, misgendering claimant so many times that after repeated efforts

with human resources failed that a claimant filed a complaint with EEOC and then believed employer misled EEOC regarding when claimant requested their pronoun choice.

Employer admits there were multiple times of misgendering and use of pronouns that did not match what claimant requested and there were many meetings with human resources regarding this issue at the request of claimant. Further, claimant filed a complaint about the matter with EEOC in April 2021, but that complaint was dismissed the end of September 2021.

Records show claimant has received \$990.00 in benefits for three weeks from 03/27/22 - 04/16/22, with their weekly benefit amount being \$330.00. Employer has no knowledge whether they participated in the telephone interview nor whether they submitted some documentation for fact finding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with 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.

Iowa Admin. Code r. 871-24.26(1) 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

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).

Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer." *McCunn v. Empl. Appeal Bd.*, 451 N.W.2d 510 (Iowa App. 1989) (*citing Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534 (Iowa 1985)). "An employee may choose to leave employment for several reasons, with each reason important in the decision to quit." *Taylor*, 362 N.W.2d at 540.

Claimant's work environment was intolerable/hostile, as they were consistently misgendered after repeated requests regarding their choice of pronouns, repeated meetings with employer and human resources regarding their choice of pronouns and why employer fails to honor that choice, leading to an EEOC complaint, and the other treatment experienced. Claimant resigned rather

than remain subjecting themselves to the detrimental work conditions impacting them. Claimant's leaving was for good-cause reasons attributable to the employer according to Iowa law.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 96.3(7)a-b, 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)(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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(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.

(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 not disqualifying, benefits were paid to which they were 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.

There is no reversal, as there is no disqualification from benefits. Therefore, there was no overpayment and no repayment needed and employer's participation level in fact-finding is moot.

DECISION:

The March 21, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon finding the December 20, 2021, voluntary quit was for good cause attributable to employer is **AFFIRMED**. As such, the issues of overpayment, repayment and charging the employer is moot.



Darrin T. Hamilton
Administrative Law Judge

June 30, 2022
Decision Dated and Mailed

dh/mh

NOTE TO EMPLOYER: Employer provided a local address for his store so he could get a copy of the decision. That address is added to the two other addresses of employer. Employer is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so the information can be updated within our systems and not just on this one printed decision as to whom they currently utilize to assist them in unemployment matters as they have two different agencies listed now.