

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ORIENT CANOIS
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 16A-UI-05947-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/17/16
Claimant: Respondent (2)**

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding
Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 18, 2016, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 14, 2016. Claimant participated personally. Employer participated by Alejandra Rojas.

ISSUES:

Whether claimant quit for good cause attributable to employer.

Whether claimant was overpaid benefits.

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 19, 2016. Claimant refused to continue working at his new job on April 19, 2016. When claimant refused to do this, he was terminated.

Claimant had been working for employer for nearly a year, when the department for which claimant worked was eliminated. As a result of the department elimination, claimant and other coworkers were allowed to bid on new jobs according to seniority. Claimant was allowed to observe other jobs prior to his bidding. Although claimant got a job for which he'd bid, other coworkers with more seniority were able to transfer into departments claimant wanted.

When claimant started his new job, his muscles ached and his hands swelled from the new and different labor involved. Claimant went to the company nurse and the nurse temporarily placed him in a different job, as his muscles weren't accustomed to his new job. Claimant was then returned to his new job a few days later.

Claimant refused to work at his new job and asked that his supervisor place him in another job. As all of the coworkers had already been placed in new positions, there was no other position for claimant to go to. Claimant was told that he would not be able to transfer positions as none was available.

Claimant only went to the company nurse on the one occasion. Claimant never brought a note from his doctor stating that claimant was not able to do the new job.

Claimant has received benefits in this matter of \$431.00 a week for a total benefits amount of \$3,403.00.

Employer did substantially participate in fact finding in this matter.

REASONING AND CONCLUSIONS OF LAW:

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 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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he didn't like his new position with the company after the department in which claimant worked was shut down.

Employer tried to ease the difficult transition to the new job as it placed claimant temporarily in another job when claimant's hands were swollen. Claimant got to have a say in where he was placed, after the division where he previously worked shut down. It was only upon claimant's refusal to work where he'd asked to be placed and, therefore, voluntarily quit, that employer ended the job.

The overpayment issue was addressed. As claimant voluntarily quit his employment, he is not entitled to the unemployment benefits received. Claimant has been overpaid \$3,403.00 in this matter.

The issue of employer participation was addressed. Employer did substantially participate in fact finding such that employer's account shall not be charged for claimant's overpayment.

DECISION:

The decision of the representative dated May 18, 2016, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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