

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY A KOPRIVA**  
Claimant

**APPEAL 19A-UI-08609-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JM LAWN & LANDSCAPE LLC**  
Employer

**OC: 10/06/19  
Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
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/appellant filed an appeal from the October 24, 2019 (reference 02) unemployment insurance decision that allowed benefits to the claimant based upon the claimant being laid off for lack of work. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2019. The claimant, Jeffrey A. Kopriva, participated personally. The employer, JM Lawn & Landscape LLC, participated through witnesses Marcia Hofsommer, Jason Hofsommer and E. Dean Hofosommer. The administrative law judge took official notice of the claimant's administrative records, including the fact-finding documents.

**ISSUES:**

Did the claimant voluntarily quit without good cause attributable to the employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mechanic from March 2, 2015 until July 26, 2019. Claimant's job duties included making repairs to the employer's equipment and trucks for the lawn care and snow removal business. Jason Hofsommer was his immediate supervisor.

In January of 2019, claimant told the employer that he would be quitting his employment to move to Texas to start his own business. His wife had become employed in Texas and it was his intent to move out of the State of Iowa after his daughter finished high school and was off to college.

In the summer of 2019, claimant told the employer that July 26, 2019 would be the last day he would be able to work full-time due to his plans to move out of the State of Iowa. The employer hired someone to replace the claimant as full-time mechanic and claimant trained the new

employee. However, claimant's mother-in-law fell ill and claimant decided to delay his plans to move out of the State of Iowa in order for his family to support his mother-in-law.

Claimant spoke to Mr. Hofsommer about staying on at work and Mr. Hofsommer agreed that he could continue to work on-call so long as work was available. Claimant worked on-call after July 26, 2019 and his last day physically working on the job was August 13, 2019.

Claimant received benefits of \$2,478.00 for the six weeks between October 6, 2019 and November 16, 2019. The employer did not participate by telephone in the fact-finding interview; however, it provided information in its statement of protest that included the reason and date of claimant voluntarily quitting.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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).

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

Claimant decided to voluntarily quit his employment to move out of the State of Iowa for personal reasons. The employer accepted his resignation of his full-time position and hired a new employee to replace the claimant. The circumstances of the claimant's mother-in-law falling ill and claimant's plans changing to support her for a period of time do not negate the fact that claimant had previously decided to voluntarily quit to move, his resignation of his full-time position was accepted by the employer, and another worker was hired to replace the claimant.

The employer's actions in allowing the claimant to work on-call after he voluntarily quit his full-time employment does not mean the initial separation was not disqualifying. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied. Because benefits are denied, the issues of overpayment and chargeability must be addressed.

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 disqualifying, benefits were paid to which he was not 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 those 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. The

employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7).

In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer participated in the fact-finding interview by submitting detailed factual information about the claimant quitting of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer, the claimant is obligated to repay to the agency the benefits he received in connection with this employer's account, and this employer's account shall not be charged.

**DECISION:**

The October 24, 2019 (reference 02) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date of July 26, 2019, and provided he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits of \$2,478.00 for the six weeks between October 6, 2019 and November 16, 2019 and is obligated to repay the agency those benefits. The employer participated in the fact-finding interview and its account shall not be charged.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn