

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSY J CHANDLER
Claimant

APPEAL NO. 14A-UI-03367-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 03/02/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Pilot Travel Centers, LLC. filed a timely appeal from a representative's decision dated March 19, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 21, 2014. Claimant participated. The employer participated by Mr. Dean Habhab, General Manager, and Ms. Cassidi Schwer, Restaurant General Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Susan Chandler was employed by Pilot Travel Centers, LLC. from June 21, 2012 until November 21, 2013 when she voluntarily left her employment without notice. Ms. Chandler was employed as a "coffee host" and was paid by the hour. Her immediate supervisor was the general manager, Mr. Habhab.

Ms. Chandler left her employment with Pilot Travel Centers LLC after completing her work shift on February 21, 2014. On that date, the claimant had received the negative results from a "mystery shopper" evaluating the claimant's job performance. On that date the claimant expressed her concern that the employer might be considering discharging her based upon the low mystery shopper score. Ms. Chandler did not bring her concerns to the facility's general manager but instead left her employment that day and did not return. After three or more days had elapsed where the claimant had not reported for scheduled work and had not provided any notification to the employer, the employer reasonably concluded that Ms. Chandler had chosen to leave her employment with the company.

Prior to leaving her employment on February 21, 2014, Ms. Chandler had been dissatisfied because her working hours had been reduced. The claimant had been hired to work 32 hours per week in her position of coffee host but the working hours had been reduced to approximately 20 hours per week in December 2013 based upon the company's corporate assessment about the number of hours that the position should be assigned based upon its profitability.

Although claimant's weekly hours had been reduced in December 2013, Ms. Chandler did not leave her work at that time nor file a claim for partial unemployment insurance benefits. The claimant did complain to the facility's general manager about the reduction in hours. The general manager had no authority to override the corporate decision about the number of hours to be assigned to the coffee host position, but did offer Ms. Chandler increased working hours if the claimant was willing to perform other duties such as that of a cashier. Although dissatisfied with the number of working hours given to her, Ms. Chandler did not accept the offer of additional hours made from time to time by the general manager. Because the claimant had been unwilling to accept the additional hours on an as-needed basis, the employer was unable to regularly schedule Ms. Chandler for more hours as they could not rely on the claimant accepting them.

While the claimant had been dissatisfied with the number of working hours given to her, the claimant at times did not make herself available for all of the hours that the employer was making available to her being absent from work for personal reasons or reporting late.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

871 IAC 24.25(28) 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 section 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 section 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:

- (28) The claimant left after being reprimanded.

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). An individual who voluntarily leaves

their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee, Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

Ms. Chandler left her employment with Pilot Travel Centers, LLC. after completing her work shift on February 21, 2014 in anticipation that she might be reprimanded or discharged based upon a poor mystery shopper rating that she had received that day. Prior to leaving employment the claimant expressed concern that she might be discharged to another worker, however, the claimant did not bring her concerns to the general manager so that her concerns about the possibility of being discharged could be resolved. Claimant instead left employment without notice and did not further report for scheduled work shifts or provide any notice to her employer of the reason why she was not reporting for work.

The evidence establishes that Ms. Chandler had expressed dissatisfaction with the reduction in working hours that had taken place in December 2013. The facility's general manager had explained to Ms. Chandler at that time that the reduced working hours in the position of coffee host had been mandated by the company based upon the profitability of the coffee host position within the company. Although Ms. Chandler had expressed dissatisfaction with the reduced working hours, she did not file a claim for partial unemployment insurance benefits or accept the offer of more hours as a cashier made to her by the facility's general manager. The evidence establishes that Ms. Chandler was having difficulty in reporting for the reduced working hours that had been most recently assigned to her, being often absent for personal reasons or late in reporting to work. Although the claimant was aware of the company's open door policy and a company hot line, Ms. Chandler did not use these devices to provide notice to the employer of any dissatisfactions that she may have been having with her employment prior to leaving work without notice on February 21, 2014.

While the claimant's reasons for leaving may have been good cause reasons from her personal viewpoint, for the above-stated reasons the administrative law judge finds that the claimant's reasons were not good cause reasons attributable to the employer. Unemployment insurance benefits are withheld.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$1,050.00 since filing a claim with an effective date of March 2, 2014, for the weeks ending March 8, 2014 through April 5, 2014. The administrative record also establishes that the employer did participate in the fact-finding interview or make a firsthand witness available for rebuttal.

Iowa Code section 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who received benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

DECISION:

The representative's decision dated March 19, 2014, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,050.00 and is liable to repay that amount as the employer did participate in the fact finding in this matter.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs