IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CORY R CRANE
Claimant

BUSH DRY CLEANERS LLC
Employer

APPEAL NO: 15A-UI-13457-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/08/15
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 30, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 29, 2015. The claimant participated in the hearing with his brother/witness Troy Johnson and current receptionist for the employer Mystique Winters. Todd Niggeling, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time delivery driver for Bush Dry Cleaners from April 14, 2014 to November 4, 2015. He voluntarily left his employment after a disagreement with the employer.

The claimant and two other drivers split the three routes for the employer. When Ron, one of the three drivers, told the employer he was going to retire, the claimant asked that his route be added to the claimant's existing route which would have allowed him more hours. The employer stated he would consider the claimant's request but before he could respond, Jim, the other driver, began experiencing kidney failure and was not going to be able to work. As a result the employer told the claimant he could not have Ron's route and he was hiring a new driver because one driver could not cover three routes. The claimant was angry about that situation and after complaining to several other employees he asked the employer for a raise; which the employer agreed to give him October 31, 2015.

The claimant was resistant to the idea of training the new driver and made his feelings well-known to other employees but did not tell the employer he would not train the new driver. The employer had several experiences with the claimant where he was insubordinate in response to his manager and other employees but had not behaved in that manner toward the employer himself.

The claimant was expected to train the new driver November 4, 2015 but told several other employees he was not going to train him. The claimant was not scheduled to work November 2 or 3, 2015. On November 4, 2015, the claimant texted his manager and stated he was sick and would not be in. The employer's policy requires that employees personally call the manager or the employer to notify one of them of his absence and the claimant had always called in the past. After receiving the claimant's message, the manager notified the employer of the situation and the employer texted the claimant at 6:30 a.m. and asked, "Did you not show up today because you did not want to train Steve?" The claimant did not respond to the text from the employer. At 11:00 a.m. the employer texted the claimant again and said, "Due to the premeditated insubordination I will pay you for two weeks and say good luck to you." The claimant waited four and one-half hours after that before responding to the employer at 3:30 p.m. At that time he indicated he had a doctor's note and the employer instructed him to bring it to the office. The claimant brought the note in when the employer was out, crumpled it up and put it on the employer's desk. On his way out of the employer's office the claimant made disparaging remarks about the employer and told the counter person he was going to sue the employer. The employer planned to talk to the claimant about his note and try to determine if he was legitimately gone or was simply trying to avoid training the new driver but the claimant did not return to work or call the employer after dropping the note off November 4, 2015.

The claimant has claimed and received unemployment insurance benefits in the amount of $973 for the seven weeks ending December 26, 2015.

The employer participated personally in the fact-finding interview through the statements of Owner Todd Niggeling.

REASONING AND CONCLUSIONS OF LAW:

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

The claimant maintains his employment was terminated while the employer argues the claimant voluntarily quit his job. For the reasons stated below, the administrative law judge finds the claimant voluntarily quit his job.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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.

The claimant made it clear to other employees and his manager that he was very disappointed the employer was going to hire another driver to cover the loss of two drivers and that he was not interested in training the new driver. The day he was scheduled to begin training the new driver the claimant texted his manager and stated he was ill. The employer's policy requires that employees personally call the owner or manager if he is going to be absent but the claimant ignored that procedure, choosing to text his manager instead. Given the claimant's well-known dissatisfaction with the employer's decision to hire a new driver and his objections to training the new driver, the employer's suspicions regarding whether the claimant was actually ill or just avoiding the training were reasonable. The employer sent the claimant a text message at 6:30 a.m. to ask whether he was absent because he did not want to train the new driver, which gave the claimant an opportunity to state he was truly ill and planned to have his brother drive him to the emergency room but instead the claimant chose not to respond at all, even though he did not leave for the emergency room until around 9:00 a.m. The claimant's failure to respond to the employer's text led the employer to the reasonable conclusion the claimant did not come in because he did not want to train the new driver. Consequently, at 11:00 a.m. the employer told the claimant he was terminating his employment due to the continuing insubordination shown by the claimant. The claimant waited four and one-half hours to respond to that message from the employer and then told the employer he had a doctor's excuse. If that was the case, the employer wanted to rethink the termination because he made the decision without all relevant information. As a result, the employer instructed the claimant to drop off his doctor's note and after crumpling the note up the claimant did put the note on the employer's desk before making a disparaging comment about the employer and saying he was going to sue it on his way out. The claimant never contacted the employer again.

The claimant's previous and increasing acts of insubordination influenced the employer's belief that the claimant chose not to come to work November 4, 2015; not because he was ill but because he did not want to train the new driver. Once the employer received notice that the claimant did actually have a doctor's note he reconsidered his decision and asked the claimant to provide the note. There was no reason for the employer to ask the claimant for the note if he still planned to terminate the claimant's employment. There was no reason for the claimant to supply the note if he truly believed his employment was terminated. At that point, the claimant was still employed by the employer pending review of his medical note. The claimant chose, however, not to communicate with the employer after storming out and did not call the employer or show up for work for three consecutive workdays. Under these circumstances, the administrative law judge must conclude the claimant voluntarily quit his job without good cause attributable to the employer. Therefore, benefits must be denied.

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 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Owner Todd Niggeling. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of $973 for the seven weeks ending December 26, 2015.

DECISION:

The November 30, 2015, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of $973 for the seven weeks ending December 26, 2015.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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