

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRIONNA DAVIS**  
Claimant

**APPEAL 19A-UI-09293-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INSIGHT PARTNERSHIP GROUP LLC**  
Employer

**OC: 10/27/19  
Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
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

**STATEMENT OF THE CASE:**

On November 25, 2019, Insight Partnership Group LLC (employer) filed an appeal from the November 19, 2019 (reference 01) unemployment insurance decision that determined Brionna Davis (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on December 19, 2019. The parties were properly notified of the hearing. Employer participated by Human Resources Coordinator Amanda Cosgrove and Program Director Amanda Johnson. Claimant did not register a number for the hearing and did not participate.

Employer's Exhibits 1-4 were admitted. Official notice was taken of claimant's payment history on the unemployment insurance system.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a part-time life skills specialist. Claimant's first day of employment was March 7, 2019. The last day claimant worked on the job was September 13, 2019. Claimant's immediate supervisor was Johnson. Claimant's schedule varied from day to day.

Claimant was hired as a part-time employee. Her hours fluctuated, but she typically worked approximately 30 hours per week. Exhibit 3. In June, claimant requested full-time work. Exhibit 2. Then, for several weeks in July and August, she was scheduled to fill in for shifts that would have

had her working 40 hours per week. Exhibit 3. However, she called in for several of those shifts and only ended up working approximately 140 of the 160 hours she was scheduled during those weeks. Exhibit 3. Following this, employer decided not to move claimant to regular, full-time employment, as she had not demonstrated she was able to reliably complete full-time hours.

Claimant was a no-call/no-show on September 19 and 20, 2019. Employer's head of scheduling spoke with claimant about why she had missed those shifts. Claimant said she was having family issues. Claimant said she did not wish to quit but was OK with being terminated. Johnson subsequently reached out to claimant numerous times to see how employer could help and how to get her back on the schedule. However, claimant did not return these calls or otherwise communicate with employer about returning to work. Employer's policy is that two consecutive no-call, no-show absences is considered job abandonment.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$347.00 for a total of seven weeks, from the week ending November 2, 2019 and continuing through the week ending December 14, 2019. The total amount of benefits paid to date is \$2,429.00.

Cosgrove participated at the fact-finding hearing on behalf of employer.

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

For the reasons set forth below, the November, 2019 (reference 01) unemployment insurance decision that determined eligible for benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.25 provides in relevant part:

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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.
- (18) The claimant left because of a dislike of the shift worked.
- (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. While claimant initially expressed that she did not wish to quit, she also said she was OK with being terminated. Furthermore, her subsequent conduct shows she no longer desired to remain in the relationship of an employee with the employer. She did not return calls from employer asking how it could help and how to get her back on the schedule.

Claimant has failed to show her voluntary leaving was for good cause attributable to employer. It appears claimant quit due to a dissatisfaction with her hours. However, there was no change in the employment contract. She was aware she was hired for part-time hours, which is demonstrated in part by her request to move to full-time hours. Employer attempted to move her to full-time hours but then determined, based on her performance, that she was not able to reliably complete full-time work. Claimant's quitting is more accurately described as being due to a dislike of the work shift or work environment. Those reasons are presumptively without good cause attributable to employer, and the administrative law judge finds they were without good cause here.

The administrative law judge notes that while claimant had two no-call, no-show absences, only three no-call, no-show absences warrant a presumption of a voluntary quit under Iowa law.

However, as set forth above, claimant's conduct following the two no-call, no-show absences demonstrate her quitting was voluntary.

- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

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.

(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.

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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$347.00 for a total of seven weeks, from the week ending November 2, 2019 and continuing through the week ending December 14, 2019. The total amount of benefits paid to date is \$2,429.00.

Because claimant received benefits and this administrative law judge has subsequently determined she is ineligible, claimant has been overpaid benefits. Because Cosgrove did participate in the fact-finding hearing, benefits shall be recovered; 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.

**DECISION:**

The November 19, 2019 (reference 01) unemployment insurance decision is REVERSED. Claimant is not eligible for benefits and has been overpaid benefits. Benefits in the amount of \$2,429.00 shall be recovered; 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.

Claimant is not eligible for benefits until she has earned wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements.

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Decision Dated and Mailed

abd/scn