

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE A LA TOUR
Claimant

S T L CARE COMPANY
Employer

APPEAL 16A-UI-06796-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/22/16
Claimant: Respondent (2)

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 in Fact-finding Interviews

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 8, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon claimant's voluntary quitting of employment with good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2016. The claimant, Stephanie A. La Tour, did not participate and did not register a telephone number to be contacted at. The employer, S T L Care Company, participated through Hearing Representative Jenna Gardner; Human Resources Director Janice Otting; Program Director Lisa Mills; Administrative Assistant Stephanie Kies; Qualified Intellectual Disabilities Professional Megan Chrissotimos; and Qualified Intellectual Disabilities Professional Ryan Kriner. Employer's Exhibits 1 through 5 were admitted. Administrative notice was taken of the claimant's unemployment insurance benefits file specifically the DBRO computer screen showing benefits paid to claimant.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant overpaid benefits?
Should the claimant repay benefits and/or charge employer due to employer participation in the fact-finding interview?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Shift Supervisor from January 20, 2015 until May 10, 2016. Her job duties consisted of supervising employees who helped individuals with disabilities. Claimant's direct supervisor was Lisa Mills.

Claimant and another Shift Supervisor named Sharon Williams did not get along. The two frequently did not communicate well together. They had both been counseled in 2015 and 2016 to work on their communication skills with each other so they got along.

On May 10, 2016 claimant was scheduled to work until 2:15 p.m. Claimant and Ms. Williams were bickering with each other. Prior to her shift ending claimant came into Ms. Mills' office and threw a paper check at her. Claimant then yelled "I can't take this shit anymore" and walked out during her shift. Ms. Mills asked claimant to give a written resignation and she refused. The following day on May 11, 2016 claimant contacted Ms. Kies and Ms. Chrissotimos to make arrangements to pick up her paycheck, which she did.

Claimant has received unemployment insurance benefits for the six weeks between May 28, 2016 and July 2, 2016. The gross amount of benefits received during these six weeks is \$2,622.00. Ms. Otting and Mr. Kriner participated by telephone in the initial fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntary quit without good cause attributable to the employer. Benefits are denied.

As a preliminary matter, I find that the Claimant was not discharged from employment but that she voluntarily quit her employment.

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(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

Claimant and Ms. Williams were constantly bickering with each other. They had met with their supervisors on two separate occasions and were counseled about getting along with each other. On May 10, 2016 claimant was again bickering with Ms. Williams. Claimant went to Ms. Mills and quit her employment.

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). 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). Claimant intended to quit when she told Ms. Mills she “was not going to take this shit anymore”; walked off the job; and refused to return to work for her next scheduled shift. The claimant left because of her inability to work with Ms. Williams. There is no evidence that claimant’s employment was detrimental or intolerable. As such, benefits are denied. Because benefits are denied, overpayment of benefits must be addressed.

Iowa Code section 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.

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. (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 states 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 claimant 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 benefits, even though the claimant acted in good faith and was not otherwise at fault.

Claimant was overpaid six weeks from 02/20/16 through 03/26/16 for a total amount of \$2,622.00. 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), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. The employer, specifically Ms. Otting and Mr. Kriner, participated in the fact-finding interview. 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 June 8, 2016, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are withheld in regards to this employer until such time as the claimant is deemed eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,622.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/pjs