

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWARD A VASQUEZ**

Claimant

**APPEAL NO. 16A-UI-02577-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATHENE ANNUITY AND LIFE COMPANY**

Employer

**OC: 01/31/16**

**Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 19, 2016 (reference 01) decision that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged for benefits; based on an Agency conclusion that the claimant voluntarily quit on January 25, 2016 for good cause attributable to the employer. After due notice was issued, a hearing was held on March 24, 2016. The claimant, Edward Vasquez, participated. Tina Finn represented the employer and presented additional testimony through Misty Gleason. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Five and A through H into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Edward Vasquez was employed by Athene Annuity and Life Company as a full-time Senior Agency Representative until January 25, 2016; when he voluntarily quit. Mr. Vasquez had begun his employment in 2006. Mr. Vasquez held multiple positions over the course of the employment and held the Senior Agency Representative during the last two years of the employment. Mr. Vasquez performed his Senior Agency Representative duties in a call/contact

center environment. His primary duties involved answering inbound calls from customers and agents. Mr. Vasquez would on occasion be assigned to respond to incoming email. Mr. Vasquez had established particular areas of expertise and was a willing resource to more junior colleagues. In mid-2014, Misty Gleason, Manager of Agency Services, became Mr. Vasquez supervisor. Julian Sumpter was a lead worker in the contact center and had authority to direct Mr. Vasquez day-to-day work. Throughout most of the employment, Mr. Vasquez received positive reviews that acknowledged his ambition, loyalty and creativity. During the last year of the employment, Mr. Vasquez completed a undergraduate degree in marketing.

On January 12, 2016, Mr. Vasquez submitted his written resignation to Ms. Gleason at a meeting he requested for that purpose. Mr. Vasquez resignation advised the employer that January 25, 2016 would be his last day in the employment. Mr. Vasquez told the employer that he was leaving the employment to provide childcare for his brother-in-law's young daughters. Though that was one reason for the resignation, Mr. Vasquez's decision to leave the employment was also based on a December 28, 2015 annual review that included a "needs improvement" overall rating. The poor review disqualified Mr. Vasquez for a review-based pay increase as well as a review-based bonus. On August 5, 2015, Ms. Gleason had issued a written warning to Mr. Vasquez based on Mr. Vasquez being out of compliance with the employer's call handling metrics and other concerns. The written reprimand temporarily prevented Mr. Vasquez from being eligible to transfer to another position with the company. On December 9, 2015, Ms. Gleason provided written notice to Mr. Vasquez that he had resolved the concerns addressed in the August warning. However, the December 28, 2015 annual review revisited those same issues. Mr. Vasquez erroneously concluded that Ms. Gleason and Mr. Sumpter were conspiring to prevent him from advancing in the company.

Mr. Vasquez established a claim for unemployment insurance benefits that was effective January 31, 2016 and has been paid \$1,421.00 in benefits for the period of January 31, 2016 through February 27, 2016.

On February 18, 2016, a Workforce Development Claims Deputy held a fact-finding interview to address Mr. Vasquez's separation from the employment. Mr. Vasquez participated in the proceeding. Though the Claims Deputy's notes concerning Mr. Vasquez's oral statement were not scanned into the Agency's computer records, there is nothing to suggest that Mr. Vasquez engaged in intentional misrepresentation or fraud at the fact-finding interview. The employer received appropriate notice of the fact-finding interview, as indicated by the employer's document submission on February 15, 2016. The employer submitted the notice of claim and the claimant's cursory resignation memo but nothing else. On the notice of claim form, the employer had left blank the area where the employer was supposed to identify the employer representative who would participate in the fact-finding interview as well as the number where that person could be reached. Tina Finn, Human Resources Consultant, had completed the certification section of the notice of claim and provided a telephone number in that area: 515-342-2590. The Claims Deputy attempted to reach the employer at the number for Ms. Finn but was unable to reach the employer and left a message with appeal rights information.

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

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.

Iowa Admin. Code r. 871-24.25(13), (17), (21), and (37) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(17) The claimant left because of lack of child care.

(21) The claimant left because of dissatisfaction with the work environment.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record fails to establish intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. In 2015, the employer had legitimate concerns about Mr. Vasquez's work performance and compliance with company standards. On December 9, 2015, he employer acknowledged Mr. Vasquez's work to resolve those issues. The December 28, 2015 annual review looked back over the previous year, which had included the performance concerns and a written warning. The employer's decision not to award a review-based pay increase or a review-based bonus may have been uncomfortable for Mr. Vasquez but it did not amount to intolerable and detrimental working conditions. The absence of the pay increase and bonus did not decrease Mr. Vasquez's pay. Nor was Mr. Vasquez demoted. The evidence fails to support Mr. Vasquez's assertion that Ms. Gleason and Mr. Sumpter conspired to prevent him from advancing in the company.

The evidence indicates instead that Mr. Vasquez voluntarily quit due to dissatisfaction with his pay situation, dissatisfaction with the particular work environment, and due to a desire to provide childcare for his brother-in-law's children. None of these reasons provided good cause attributable to the employer for the quit.

Because the administrative law judge concludes that Mr. Vasquez's voluntarily quit was without good cause attributable to the employer, Mr. Vasquez is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Vasquez must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.  
24.10(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 claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,421.00 in benefits for the period of January 31, 2016 through February 27, 2016.

The employer had a reasonable opportunity to participate in the fact-finding interview but did not participate within the meaning of the law. Neither the notice of claim form nor the claimant's cursory resignation memo set forth the particulars of the claimant's separation from the employment. The February 15, 2016 submission of the incomplete notice of claim form and the resignation memo contradict the employer's assertion that the employer's initial assertion that the employer did not have notice of the fact-finding interview. The weight of the evidence indicates that the Claim's Deputy attempted to reach an employer representative for the fact-finding interview but no one answered the call. Because the employer did not participate in the fact-finding interview within the meaning of the law, the claimant is not required to repay the overpaid benefits and the overpayment benefits may be assessed to the employer's account. However, the employer's account will be relieved of liability for benefits paid to the claimant on or after the mailing date of this decision.

**DECISION:**

The February 19, 2016 (reference 01) decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$1,421.00 in benefits for the period of January 31, 2016 through February 27, 2016. Because the employer failed to participate in the fact-finding interview within the meaning of the law, the claimant is not required to repay the overpaid benefits and the overpaid benefits may be assessed to the employer's account. However, the employer's account will be relieved of liability for benefits paid to the claimant on or after the mailing date of this decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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