IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LORRE R JONES Claimant **CASEY'S MARKETING COMPANY** Employer	**APPEAL 16A-UI-12255-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/16/16** **Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
871 IAC 24.10 – Employer Participation in the fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 2, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2016. Claimant participated. Employer participated through Maris Masengill, Area Supervisor and Stefani Rawles, of Equifax who offered testimony on the employer's participation in the fact-finding interview.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager beginning on August 1, 2010 through October 14, 2016 when she voluntarily quit. The claimant voluntarily quit because she was stressed and felt she had no personal life as long as she worked the store manager job. Continued work was available for the claimant if she had not quit. No doctor advised her to quit her job. The claimant identified three situations that led to her decision to quit; the store alarm, an iTunes gift card situation and her late arrival at a meeting.

In September the store alarm kept going off around 11:15 p.m. each night after the store was closed at 11:00 p.m. According to the employer's policy, the manager is supposed to go into the store to turn off the alarm. However, a law enforcement officer is supposed to be at the store before the manager goes into the store. The local law enforcement officials would not come to the store when the alarm went off, so Ms. Masengill told the claimant not to even go to the store or not to go into the store out of concern for her safety. The alarm went off nine times

during the month of September and three times during the month of October. After the alarm kept going off without good cause, Ms. Masengill had the claimant call the service company who on October 8 fixed the alarm by moving it farther away from the door. By the time the claimant quit, the alarm issue had been resolved by the employer.

Around September 17 an elderly regular customer bought a $500.00 dollar iTunes gift card. The customer came in later and wanted to see if she could get her money back from the purchase as she had been a victim of a telephone fraud scam. The claimant could not call Ms. Masengill as she was at a doctor's appointment. The claimant called Kurt Fox, the district manager and Ms. Masengill's supervisor. Mr. Fox helped the claimant resolve the issue to the customers satisfaction. The claimant was unhappy with the way Mr. Fox spoke to her as she thought he was curt and dismissive. Mr. Fox also told the claimant to have the clerks try and spot customers who were being victimized by asking them why they wanted to buy such large dollar amount on a gift card. The claimant objected to doing that, but did instruct the clerk what to do. Mr. Fox was simply trying to see if they could help some of the more elderly customers avoid being the victim of scams. This was the only incident where Mr. Fox spoke to the claimant in what she thought was a curt or abrasive manner. The claimant continued to work for one more month before she voluntarily quit.

The last incident involved an October 12, manager's meeting that was held in Atlantic, Iowa approximately one hour from the claimant's home location. At least three days before the meeting the claimant was sent and received an e-mail from her manager Ms. Masengill telling her the start time of the meeting was now noon. The claimant admits she received the e-mail but misplaced it and did not realize the meeting time had changed. The claimant was upset that Ms. Masengill had not called her to tell her the new start time of the meeting. When the claimant arrived at the meeting, she was upset that she was late. She was not disciplined or chastised for being late. The claimant was not late because of any action of Ms. Masengill's.

The claimant also felt she was working too many hours at the store. The claimant had the authority to hire more employees, have other employees cover hours and could have utilized Ms. Masengill to cover for her if she needed time off. The claimant refused Ms. Masengill's offer to come and do books for her so she could take some time off.

When the claimant told Ms. Masengill she was going to quit, she told her she had a new job lined up working with children that was going to start on October 24. The claimant did not have a new job when she quit, she only had an interview lined up.

In the six years that Ms. Masengill had been the claimant's direct supervisor, the two had a good working relationship. Ms. Masengill did not mistreat the claimant. The claimant could not identify any more specific events that led to her decision to voluntarily quit.

The employer intended to participate in the fact-finding interview and notified the agency via e-mail of Ms. Rawles name and telephone number. The fact-finder did not contact the correct representative but instead attempted to contact Ms. Weber who was on vacation. The employer submitted documents to the fact-finder that provide identical details to the testimony provided by the employer at the appeal hearing.

Claimant has received unemployment benefits since filing a claim with an effective date of October 16, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits:
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> 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(3) 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:
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> (3) The claimant left to seek other employment but did not secure employment.

Iowa Admin. Code r. 871-24.25(21) 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:
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> (21) The claimant left because of dissatisfaction with the work environment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

“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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

The claimant simply has not established that her employer created an intolerable work environment that gave rise to good cause attributable to the employer for her quitting. The employer resolved the alarm issue before the claimant quit. Her direct supervisor had the claimant protect her own safety by instructing her not to go into the store alone when the alarm was going off. The alarm situation did not create an intolerable work environment.

Even if the administrative law judge were to assume that Mr. Fox was short or curt with the claimant when he spoke to her on one occasion, that does not create an intolerable work environment. The employer was simply trying to offer the claimant a way to help elderly customers avoid scams. The claimant continued to work for one month after the single incident

with Mr. Fox. One incident of a manager being short or curt with an employee is not sufficient to establish a detrimental work environment.

The claimant was late to the meeting because she did not read an e-mail that was sent to her telling her what time the meeting would start. The claimant's supervisor was under no obligation to provide the claimant with a telephone call instead of an e-mail. Ms. Masengill did not mistreat the claimant when she arrived late to the meeting.

Lastly, the claimant was offered relief from working by Ms. Masengill but turned down her offer of help. The claimant had it within her authority to hire more employees.

The claimant simply has not established an intolerable or detrimental work environment. Thus, her voluntarily quitting was without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
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> 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.
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> 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.
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> (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.
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> (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.

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.

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 receives benefits and is later determined to be ineligible for those 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. Iowa Code § 96.3(7)(b)(1)(a).

In this case, the benefits were not received due to any fraud or willful misrepresentation by the claimant and the employer did not participate in the initial proceeding to award benefits. As such, the claimant is not obligated to repay to the agency benefits she received in connection with this employer's account.

However, the employer did not participate in the initial proceeding to award benefits because it did not receive a telephone call when the fact finding interview was conducted. Iowa Code § 96.3(7)(b)(1)(a) provides: "[t]he employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer *failed to respond timely or adequately to the department's request for information* relating to the payment of benefits." (emphasis added). In this case the employer did not fail to timely or adequately respond to a request for information because the employer did provide the name and contact number of the representative to be contacted. The fact-finder simply did not contact the correct person for the employer. The benefits paid to claimant in this case were not because the employer failed to respond timely or adequately to the department's request for information. As such, the employer cannot be charged for the overpayment either and the overpayment shall be absorbed by the fund.

DECISION:

The November 2, 2016, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible. The claimant has been overpaid unemployment insurance benefits in the amount of $1,788.00 but is not obligated to repay the agency those benefits. Further, the employer's account shall not be charged. Instead, the overpayment in this matter is chargeable to the fund.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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