

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LAURI A PATTEN
Claimant

APPEAL NO. 15A-UI-09499-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GORDMANS INC
Employer

OC: 08/02/15
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Gordmans Inc. filed a timely appeal from a representative's decision dated August 14, 2015, reference 01, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant quit work on May 15, 2015 because working conditions were detrimental to her. After proper notice, a telephone hearing was held on September 14, 2015. The claimant participated. The employer participated by Mr. Thomas Kuiper, Hearing Representative and witnesses, Ms. Amber Hansen, Store Manager and Ms. Rachel Neal, Assistant Store Manager. Participating as an observer was Mr. Blake Richards.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Lauri Patten was employed by Gordmans Inc. from October 6, 2014 until May 15, 2015, when she quit her job without advance notice. Ms. Patten was most recently employed as a full-time stockroom lead worker and was being paid by the hour. Her immediate supervisor was Rachel Neal, Assistant Store Manager.

Ms. Patten left her employment with Gordmans Inc. on May 15, 2015, via text message to the store manager and text message to the assistant store manager.

Ms. Patten made a decision to leave her employment with Gordmans Inc. on May 15, 2015, after the store manager, Ms. Hansen, had stated that the claimant's request to have approximately three weeks off work for foot surgery needed to be approved by the corporate division of the company because leaves of absence are not handled at the store level. Ms. Patten interpreted the statement and Ms. Hansen's tone to indicate that the store manager was reluctant or unwilling to keep the claimant's job position open for her if the claimant took time off work for needed foot surgery.

Ms. Patten had become generally dissatisfied with her employment at Gordmans Inc. because Ms. Hansen, who was the store manager, at times had audited the department that the claimant was working in or otherwise had checked work that the claimant was doing. The claimant also believed that Ms. Hansen had on one occasion had singled her out to criticize the way Ms. Patten had loaded a cart with merchandise.

Prior to leaving her employment without advance notice on May 15, 2015, Ms. Patten had gone to her immediate supervisor, Ms. Neal, on a number of occasions to visit about her job and dissatisfactions, however, Ms. Patten had not filed any complaints about the treatment that she believed that she was receiving from the store manager. Although Ms. Patten was aware that she could "go up the chain of command" with any complaints if she felt that someone in her chain of command was not being responsive to her needs, the claimant did not do so. Ms. Hansen also did not use a confidential "hotline" that was available to employees to complain to upper management.

At the time Ms. Patten left her employment she had not received any warnings or disciplinary actions and her employment was not in jeopardy. Work continued to be available to Ms. Patten at the time that she chose to leave her work with Gordmans Inc.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

Iowa Admin. Code r. 871-24.25(21) and (22) provide:

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:

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

(22) The claimant left because of a personality conflict with the supervisor.

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 general dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). Leaving because of a personality conflict or inability to work with a supervisor is not good cause. 871 IAC 24.25(22). Leaving because of unlawful, intolerable or detrimental working conditions would be good cause. 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 Board, 494 N.W.2d 660 (Iowa 1993).

In the case at hand, the evidence establishes that at times the store manager questioned the claimant about her work, suggested better ways of doing her job and audited the claimant's work department, these functions were clearly within the scope of her responsibility as a store manager. The manager's statement that the medical leave of absences must be reviewed and approved by the corporate division of the company, was a reflection of corporate policy and was not made to single the claimant out for unusual or unequal treatment. The evidence in the record further reflects that at the time that Ms. Patten left her employment she was not under disciplinary action and her job was not in jeopardy. Ms. Patten also did not avail herself of reasonable alternatives that were available to her. The claimant, if dissatisfied, could have complained up the chain of command or used a confidential "hotline" that was available to employees to complain about supervisory personnel if they did not wish to do so within the chain of command. For these reasons, the administrative law judge concludes that the claimant has not established good cause attributable to the employer for leaving her employment with Gordmans Inc. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$1052 since filing a claim with an effective date of August 2, 2015 for the week ending dates August 8, 2015 through August 29, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttable.

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 § 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 § 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 § 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 state pursuant to § 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 she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who received 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 unemployment 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. 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 representative's decision dated August 14, 2015, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$1052 and is liable to repay that amount. The employer's account shall not be charged based upon the employer's participation in the fact finding.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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