

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDREA BALDWIN**  
Claimant

**PETERSON PROPERTIES INC**  
Employer

**APPEAL 18A-UI-07259-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/18**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
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:**

The employer filed an appeal from the June 26, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2018. Claimant participated and testified. Employer participated through Hearing Representative Ted Vallencia and witnesses Terri Wollard and Krystal Thomas. Official notice was taken of portions of the administrative record related to the fact-finding interview.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to 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 began working for employer on March 26, 2003. Claimant last worked as a full-time property manager. Claimant was separated from employment on June 4, 2018, when she voluntarily quit.

In April 2018 claimant was working for the employer managing two properties in Des Moines, 3000 Grand and Old English Village. Claimant approached her immediate supervisor, Wollard, and requested to drop one of the properties due to her stress levels. Wollard agreed to look into it. Around this same time Wollard received multiple phone calls from several of claimant's subordinates and two property residents expressing concern about claimant managing the 3000 Grand property full time. Wollard took this feedback into consideration and ultimately determined it would be best for her to manage Old English Village. Wollard met with claimant

on April 18 to notify her of her decision and reasons for making that decision. On April 20, claimant sent Wollard an email stating she believed she had gotten the wrong impression of her and the behavior described by others to her was not typical. Wollard reported she understood claimant was stressed and wanted to reduce her workload and, overall, she thought claimant had shown very good management skills. On May 21, claimant transitioned to working at Old English Village only.

At the beginning of June claimant's assistant property manager's ability to work was limited after she suffered an injury. Around this same time claimant learned her leasing consultant had been promoted and would be transitioning to 3000 Grand. While claimant and Wollard were in the process of trying to work out a schedule with the injured assistant property manager, claimant received notice from her leasing consultant that she would not be in her next working day due to the transition. Claimant, through a group text, responded to the leasing consultant, "uh, okay" and her assistant property manager responded, "So no notice?" Claimant testified Wollard then called her and yelled at her not to text employees and to just be the property manager, before hanging up on her. Claimant testified this was the final incident in a history of Wollard dismissing her, yelling at her, or ignoring her. Claimant decided she could not take this treatment any longer and resigned effective immediately.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 10, 2018. The claimant filed for and received a total of \$1,892.00 in unemployment insurance benefits for the weeks between June 24 and July 21, 2018. The employer did not participate via telephone in a fact finding interview regarding the separation on June 25, 2018. The employer's third party representative submitted a questionnaire containing background information on claimant's employment and an explanation of its position that claimant voluntarily quit. However, no telephone number was provided for a direct first-hand witness. The record shows attempts by the fact-finder to contact a first-hand witness and/or third party representative for the employer were unsuccessful. A voicemail was left, but the call was not returned. The fact finder determined claimant qualified for benefits.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 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:

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

...

(27) The claimant left rather than perform the assigned work as instructed.

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 contends she left employment due to an intolerable work environment. While claimant may have felt ignored or dismissed by members of management, she does not allege any behavior such as name-calling or inappropriate language was directed towards her. Claimant has not shown she was subjected to behavior or treatment that would compel an average person under the same circumstances to resign employment. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code § 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.

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 § 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 § 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 § 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 § 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 § 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 § 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 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. 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 they did participate in the fact-finding interview. Iowa Code

§ 96.3(7). The regulation provides that “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.” 871 IAC 24.10(1). The Employer provided the phone number of a third party representative who would not normally have firsthand knowledge. While this may be enough if the third party administrator had ready access to a person with firsthand knowledge, the third-party representative was not available for the call when actually contacted for rebuttal. Similarly, when the fact-finder attempted to contact the employer directly, through its telephone number of record, the call went unreturned. Under these circumstances the employer has not shown it satisfied the requirements of the participation rule. Since the employer did not meet the participation standard for the fact-finding interview, claimant is not obligated to repay to the agency the benefits she received and the employer’s account shall be charged.

**DECISION:**

The June 26, 2018, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,892.00, but is not obligated to repay the agency those benefits. The employer did not meet the participation standard in the fact-finding interview and its account shall be charged.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs