

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NANCY Y GUERRERO
Claimant

APPEAL 17A-UI-08039-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIER SERVICES INC
Employer

**OC: 07/16/17
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
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:

Premier Services, Inc. (employer) filed an appeal from the August 7, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Nancy Y. Guerrero (claimant) did not voluntarily quit but was discharged and the employer failed to provide evidence to show she was discharged for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Office Assistant, Erica Nuno. No exhibits were offered or received. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

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

Can 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: The claimant was employed full-time as a Production employee beginning on June 18, 2014, and her last day worked was June 16, 2017. On that day, the employer's client, Tur-Pak Foods contacted the employer and stated the claimant had walked off the job. The employer did not hear from the claimant again until August 10, 2017.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,075.00, since filing a claim with an effective date of July 16, 2017, for the five weeks ending August 19, 2017. The administrative record also establishes that the employer

did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

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. Benefits are denied.

Iowa law disqualifies individuals who voluntarily quit without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). The 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 (Ia. Dist. Ct. App. 1973).

In this case, the unrefuted testimony is that the claimant left without providing a reason for leaving. Her decision to leave without notice or reason and failure to return to work renders the separation job abandonment without good cause attributable to the employer. Accordingly, benefits are denied.

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 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 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. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

DECISION:

The August 7, 2017, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left the 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 \$1,075.00; however, she is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn