

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY STEVENS
Claimant

APPEAL NO: 16A-UI-07927-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALDI INC
Employer

OC: 06/19/16
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 12, 2016, reference 01, decision that allowed benefits to the claimant for the week ending June 25, 2016. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 9, 2016. The claimant participated in the hearing. Rebecca Stoughton, District Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shift manager for Aldi from October 3, 2014 to June 21, 2016. She voluntarily left her employment June 21, 2016, to accept other employment.

The claimant had been absent on several occasions due to properly reported illness. At the beginning of June 2016 the employer held a meeting with the claimant and the other shift managers and told them they would need a doctor's note for any future unscheduled absences due to illness.

On June 16, 2016, the claimant told the store manager she wanted to leave without notice because she did not feel well. The store manager reminded her she would need to bring a doctor's excuse. The claimant stated she was not going to the doctor because she had a chronic condition and did not need to see a doctor and have him tell her the same thing she had been told in the past. The store manager said she would cover the remainder of the claimant's shift but she needed a doctor's excuse and the claimant replied she would "just put in my two weeks." The store manager told the claimant to go home and get some rest and let her know what she was thinking about her two week notice later that day. The claimant did not call the store manager so District Manager Rebecca Stoughton called the claimant and asked her how she was feeling and the claimant said she was fine. Ms. Stoughton stated she understood the

claimant put in her two week notice. Ms. Stoughton asked the claimant to meet with her prior to her next scheduled shift the following Tuesday, June 21, 2016. Ms. Stoughton also told the claimant she would accept her two week notice and would contact her June 20, 2016, to verify.

On June 20, 2016, the store manager texted Ms. Stoughton and indicated the claimant needed to change her start time for June 21, 2016, from noon to 2:00 p.m. The claimant then texted the store manager and asked for her schedule the rest of the week and the store manager instructed her to call Ms. Stoughton. The claimant called Ms. Stoughton and told her she had a new job and wanted to start training at her new job in Davenport. Ms. Stoughton told the claimant she could give her June 22 through June 26, 2016, off but she needed her to work June 21, 2016, because it was too short notice to find coverage for the claimant's shift on that date. The claimant agreed and the parties planned to meet at the store at 2:00 p.m. June 21, 2016. At 1:35 p.m. Ms. Stoughton received a text message from the claimant stating, "Sorry but I won't be in today." Ms. Stoughton tried to call the claimant but she would not answer her phone or return Ms. Stoughton's calls. The text message was the claimant's last contact with the employer. Continued work was available

The claimant has claimed and received unemployment insurance benefits in the amount of \$421.00 for the one week ending June 25, 2016.

The employer did not participate personally in the fact-finding interview but did submit written documentation prior to the fact-finding.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was frustrated about her hours and the employer's new policy requiring a doctor's note for each unscheduled absence due to illness. The claimant was never guaranteed certain hours and the employer requires open availability from employees but will take scheduling requests from employees. The claimant had health insurance through the employer but had a co-pay amount of \$105.00 with her primary care physician that understandably made her very hesitant to go see her doctor, especially when the issue was a chronic condition and she knew what the doctor would instruct her to do. She never explained that to the employer, however, and consequently the employer did not know that finances played a role in the claimant's refusal to get a doctor's note when she went home early June 16, 2016, and put in her two week notice.

There may have been some confusion on the part of the claimant about her schedule after giving the employer her two week notice. The claimant had already been granted June 17 through June 20, 2016, off work before the events of June 16, 2016 occurred. She stated she would like to be able to start her training at her new job and the employer offered to cover her shifts the remainder of the week. The claimant accepted the employer's offer because she was upset about her hours and feared the work environment would be hostile because she had given her notice. When the employer stated it would cover her remaining shifts the week ending June 25, 2016, the employer was very clear in stating it needed her to work June 21, 2016, and the claimant agreed to do so. The claimant waited until it was nearly time to meet with Ms. Stoughton and start her shift June 21, 2016, before texting to say she would not be in. The claimant then refused to answer any calls from the employer and did not return to work or contact the employer after that date.

The claimant submitted her resignation notice and the employer accepted it. The claimant left before the completion of her notice period and has not provided a good cause reason for doing so. Under these circumstances, the administrative law judge concludes that because the claimant quit before finishing her two week notice period she is not eligible for benefits covering her notice period as her employment was not terminated after the employer learned the claimant was quitting. Instead, the claimant chose not to return to complete her notice period.

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.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 section 96.3(7)a, b.

The employer did not personally participate in the fact-finding interview. It did submit written documentation but did not provide the name and telephone number of an employee with firsthand information to contact for rebuttal. The employer may provide written documentation in lieu of participating personally, if, at a minimum, the information provided by the employer or the employer's representative identifies the dates and particular circumstances of the incident or incidents, including, in the event of a voluntary separation, the stated reason for the quit. Written statements or general conclusions without supporting detailed factual information are not considered participation within the meaning of the law.

In this case the employer provided undated text messages accompanied by short explanations without identifying the author of the descriptions or the name and title of one of the parties to the conversation. It did not provide the name of a firsthand witness to contact for rebuttal or identify the dates and circumstances surrounding the claimant's stated reason for leaving. Consequently, the administrative law judge must conclude the employer has not met the definition of participation as required by law.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the benefits the claimant has received to date, in the amount of \$421.00 for the one week ending June 25, 2016.

DECISION:

The July 12, 2016, reference 01, 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 received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits, in the amount of \$421.00 for the one week ending June 25, 2016, shall be charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs