

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M HANNA
Claimant

PUTMAN INC
Employer

APPEAL 16A-UI-13573-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
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:

The employer filed an appeal from the December 12, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon its failure to show sufficient evidence of misconduct. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2017. The claimant Heather Hanna participated and testified. The employer Putman Inc. participated through Vice President and General Manager Amy Sheaffer and President Bruce Putman. Employer's Exhibits 1 through 7 and claimant's Exhibit A were received into evidence.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 recruiter from June 22, 2016, until this employment ended on November 23, 2016, when she voluntarily quit.

On November 23, 2016, Sheaffer called a meeting with claimant to discuss some issues she was having involving attendance and a rumor that she was going to quit at the end of the year.

According to Sheaffer claimant told her that it was her intent to quit at the end of the year, but she did not give an exact date she would be leaving. The two then discussed claimant's attendance and the conversation became heated. Claimant told Sheaffer she would always put her family first. The conversation then ended so both parties could cool down. Sheaffer then called Putman. Sheaffer and Putman both testified that during their conversation they agreed the employer would try to work with claimant on her situation in order to maintain the employment relationship. Both also testified that Putman is the only individual who can approve a termination and he had not given his approval for such action. Sheaffer testified she then asked another employee, Heather Foster, to come with her to continue her conversation with claimant. The employer submitted a written statement from Foster confirming this. (Exhibit 2). Sheaffer explained that she asked Foster to come with in order to help diffuse the situation given how heated the conversation got before.

According to Sheaffer she approached claimant, with the intention of working things out, and commented that she agreed claimant should put her family first. Sheaffer testified before she could finish the conversation claimant collected her belongings and walked out the door, leading the employer to conclude she had quit. Sheaffer testified work would have continued to be available to claimant and, if she was going to quit, she would have liked claimant to stay on long enough to train her replacement. According to Sheaffer, at one point in the conversation, claimant specifically asked if she was being terminated and Sheaffer told her she was not.

Claimant testified she did not quit, but was terminated. Claimant admitted she asked Sheaffer if she was being terminated, but testified she responded, "I don't know, are you quitting?" According the claimant she told Sheaffer she was not quitting. Claimant testified, after Sheaffer spoke with Putman, Sheaffer approached her, told her to collect her belongings and delete all her work contacts from her phone, and asked Foster to escort her out of the building. Sheaffer testified her husband was thinking about starting his own business, but she had no intention of resigning.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 20, 2016. The claimant filed for and received a total of \$3,731.00 in unemployment insurance benefits for the weeks between November 20, 2016 and January 21, 2017. The employer did not participate in a fact finding interview regarding the separation on December 9, 2016. The employer received notice of the fact-finding interview but did not participate because both Sheaffer and Putman were busy at the time of the interview. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

There is a dispute between the claimant and employer as to whether she was discharged or voluntarily quit. Claimant contends Sheaffer told her to pack up her belongings and leave. Sheaffer testified claimant packed up her things and left on her own accord.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. Claimant voluntarily quit her employment.

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:

(19) The claimant left to enter self-employment.

...

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

...

(28) The claimant left after being reprimanded.

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).

Here, it appears claimant voluntarily quit her job following a heated discussion with her supervisor regarding attendance issues. 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 issues to be decided are whether claimant was overpaid unemployment insurance benefits, if she is required to repay any benefits, and if the employer's account should be charged.

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 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). In this case, the claimant has received benefits but was not eligible for those benefits. The employer received notice of the fact-finding interview, but did not participate. The employer’s failure to participate was not due to any error or delay on the part of the Agency or the US Postal Service or other good-cause reason. 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 December 12, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was not discharged but voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she is deemed eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$3,731.00 and 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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