

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SARAH L KERSEVICH**  
Claimant

**APPEAL NO. 19A-UI-01976-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 02/10/19**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The University of Iowa (employer) appealed a representative's February 28, 2019, decision (reference 01) that concluded Sarah Kersevich (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 20, 2019. The claimant participated personally. The employer participated by Mary Eggenburg, Benefits Specialist; Stefanie Pirkel, Human Resources Director; Maeve Jackowski Price, Human Resources Coordinator; and Maria Lofgren, Director of Advance Practice Providers. Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 22, 2016, as a full-time advance register nurse practitioner. Human Resources became aware that the claimant had questions about her duties and responsibilities. The claimant felt her work responsibilities were not consistent with her job description. There was an annual patient education symposium held in August that the claimant was responsible for helping plan. After the August 2017, event, the claimant complained to the Director of Advance Practice Providers about her role in the planning.

The claimant's supervisor and members of the employer's human resources team met with the claimant on July 2, 2018, in advance of the August 2018, event and developed a document clarifying expectations. It was agreed by the group that ten-percent of the claimant's duties would be "supporting and participating in programming initiatives, including patient education symposiums". On August 3, 2018, the group met again to review their work and start an eight-week pilot period. On October 2, 2018, the group had its final meeting. The claimant did not voice any concerns to the employer at the final meeting or at any other time after that meeting.

On November 19, 2018, the claimant sent a group email stating, "I would like to give notice that I am leaving my position. I believe I am required to give 30 days notice. I am not sure what else is needed, please let me know what the necessary steps are." The claimant's last day of work was on December 18, 2018. Continued work was available had the claimant not resigned. The claimant did not engage in the exit interview process or give the employer a reason for the separation. The claimant left work because she was asked to perform duties that were outside of her job description and she was concerned about a job evaluation in the spring of 2019.

The claimant filed for unemployment insurance benefits with an effective date of February 10, 2019. She received \$2,645.00 in benefits after the separation from employment. The employer participated personally at the fact finding interview on February 22, 2019, by Mary Eggenburg. Ms. Eggenburg left the fact finding interview early to attend an appeal hearing. The employer provided a document to the fact finder stating "Ms. K sent an email on November 19, 2019, and gave a 30-day notice that she was leaving her position."

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

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code r. 871-24.25(27) 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:

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

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). The claimant's intention to voluntarily leave work was evidenced by her actions. She told the employer she was leaving and quit work.

In 2017, the employer asked the claimant to perform work that was not in her original list of duties. By the time the claimant resigned, she helped with the symposium for two years. Helping with the event may have been new in 2017. It was not a change in her contract for hire in November 2018. On November 19, 2018, the claimant's separation was not due to a change in her contract for hire.

When an employee quits work rather than perform the assigned work, her leaving is without good cause attributable to the employer. The claimant left work rather than perform the job assigned by the employer. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

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 claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

**DECISION:**

The representative's February 28, 2019, decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs