

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DIONTAE D MCBRIDE

Claimant

HARBOR FREIGHT TOOLS USA INC

Employer

APPEAL NO. 19R-UI-02378-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/20/19

Claimant: Appellant (2)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 6, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 4, 2019. Claimant participated. Employer participated by Nathan Eichmeyer.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 26, 2018. Claimant voluntarily quit after that date as he was upset that he believed he was written up for a tardiness in an event that was the fault of employer.

Claimant worked as a clerk and cashier on a part-time basis for employer. On December 26, 2018 claimant was on time for work, but was locked out of the building as the managers who were already there were working in back and did not hear claimant knocking or calling a manager. Claimant was not let into the store until after his scheduled time for arrival. Claimant clocked into work 12 minutes late.

A manager saw that claimant had clocked in late and prepared a write up for his tardiness in accordance with company policies. This write up, along with another write up from a previous tardy were given to claimant while he was working. Claimant explained that he was not in fact tardy, and got a different manager to support his position that he'd been knocking and calling the managers at the time his shift was to begin. Claimant was upset to receive the write up when he wasn't at fault for being late.

Claimant was informed before his shift ended that the time was adjusted and that he was getting credit for a full day's work. Claimant stated that he was not told that his write up was being removed. Claimant stated that he told a different manager before the end of his shift that he would no longer be working for employer. Employer stated that the manager to whom claimant referred was specifically asked about claimant's status, and that person had no idea.

For the next three days when claimant was scheduled for work, employer called claimant on each day and claimant did not answer, return the call, or show for work. At all times there was still ongoing work available for claimant.

Claimant has received unemployment benefits in this matter in the amount of \$1,888.00

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to

section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was upset that there was a write up issued to claimant for a tardiness which he did not commit. Claimant knew before he left work that day that he was going to get paid for the time he waited outside. Logic states that claimant's write up must necessarily be removed as claimant was no longer considered late for work, he could not be written up for being late for work. Whether this removal of the write up took place that day, or a few days later is of little importance. Claimant was in no way injured through the incorrect assessment of tardiness nor through the temporary write up.

Claimant stated that he'd intended to quit, but employer gave testimony that no manager reported claimant stated he was quitting. Whether claimant quit on December 26, or after he'd missed his next three days of work is a difference without a change in consequence. Whether claimant quit after his shift on December 26, 2018 or quit by not showing up for work the next three scheduled days, his quit was without good cause attributable to employer, and disqualifies claimant from the receipt of unemployment benefits.

Unemployment benefits received by claimant in this matter are overpayments as claimant was not entitled to receive the benefits he has received to date.

DECISION:

The decision of the representative dated February 6, 2019, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Unemployment benefits received by claimant in this matter are overpayments.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn