

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARISSA M ARCHER
Claimant

APPEAL NO. 17A-UI-07620-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 07/02/17
Claimant: Respondent (2)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 26, 2017, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on May 24, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on August 16, 2017. Claimant Karissa Archer participated. Barbara Owca, Human Resources Business Partner, represented the employer. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. The administrative law judge took official notice of the fact-finding materials.

The claimant received her hearing notice by email on August 7, 2017. The claimant waived the 10-day notice requirement.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karissa Archer was employed by Central Iowa Hospital Corporation/UnityPoint Health Des Moines as a full-time Patient Care Technician from 2015 until March 26, 2017, when she voluntarily quit with the intent to attend nursing school. Ms. Archer's duties involved observing hospitalized patients to ensure that they did not remove IVs or otherwise engage in behaviors that would adversely

impact their care. Ms. Archer's immediate supervisor was Mackenzie Rittler-Cheney, Clinical Staffing Supervisor. Ms. Archer most recently performed work for the employer on March 26, 2017.

In March 2017, Ms. Archer took an admission exam in the hope of gaining admission to a nursing program. In March 2017, Ms. Archer spoke to Ms. Rittler-Cheney about her desire to transition to part-time employment in light of her planned nursing studies. Ms. Archer had been full-time throughout the employment. Ms. Rittler-Cheney denied Ms. Archer's request for part-time employment. Ms. Rittler-Cheney told Ms. Archer she would need either to go to on-call, "prn" status, or separate from the employment if she did not wish to continue as a full-time employee. Ms. Archer and Ms. Rittler-Cheney did not come to any agreement or understanding as to whether Ms. Archer would remain full-time, would go to prn status or would separate from the employment. Instead, Ms. Archer simply ceased appearing for work and ceased contact with the employer after her shift on March 26, 2017. If Ms. Archer had gone to prn status, that change would have been documented by the human resources staff and Ms. Archer would have been obligated to work at least two shifts per month. The employer's human resources department did not document a change to prn status. Ms. Archer did not contact the employer to schedule her two required monthly shifts. Before Ms. Archer ceased to appear for shifts, she had grown bored with her Patient Care Technician duties.

On March 29, 2017, Ms. Archer received her nursing program entrance exam results and learned that she had not passed the exam. Despite her nursing school plans falling through, Ms. Archer did not make contact with the employer. Instead, on April 3, 2017, Ms. Archer began assisting with an unlicensed in-home daycare on a part-time basis and for substantially less pay than her full-time employment had provided. During April 2017, the employer attempted to contact Ms. Archer via email and by telephone, but was unable to connect with Ms. Archer.

Ms. Rittler-Cheney waited until May 24, 2017 to document Ms. Archer's separation from the employment. The employer documented the separation as a voluntary quit due to no-call/no-show absences. The employer's attendance policy included a provision that three consecutive no-call/no-show absences would be deemed a voluntary quit. The employer had reviewed the attendance policy with Ms. Archer at the start of her employment and made the policy available via computer.

At the end of May 2017, Ms. Archer applied for public assistance through the Family Investment Program (FIP). As a condition for receiving public assistance, the FIP program required that Ms. Archer contact Central Iowa Hospital Corporation to inquire about her job status. At the urging of the state authority, Ms. Archer contacted the employer's human resources department and confirmed that she was no longer considered an employee.

Ms. Archer established a claim for unemployment insurance benefits that was effective July 2, 2017. Central Iowa Hospital Corporation is the sole base period employer. Workforce Development set Ms. Archer's weekly benefit amount at \$400.00. Ms. Archer has received \$2,400.00 in benefits for the six-week period of July 2, 2017 through August 12, 2017.

On July 18, 2017, Workforce Development mailed notice to the parties of a fact-finding interview set for 10:45 a.m. on July 25, 2017. The notice was mailed to the parties' last known address of record. Neither party appeared for the fact-finding interview. At 10:50 a.m. on July 25, 2017, the Workforce Development claims deputy attempted to reach employer representative Kendra Steuhm, Human Resources Business Partner, at the contact telephone number the employer

had provided to Workforce Development at the time of protest. When Ms. Steuhm did not answer, the claims deputy left a voice mail message for Ms. Steuhm.

On July 28, 2017, Ms. Steuhm filed the employer's appeal from the July 26, 2017, reference 01, decision. In the appeal letter, Ms. Steuhm asserted that she had been unable to attend the fact-finding interview because she had not received the notice in a timely manner. However, Ms. Steuhm did not state in the appeal letter when the employer had in fact received the notice and there is no indication that the notice of the fact-finding interview failed to reach the employer's address of record in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.25(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 Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(26) 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:

(26) The claimant left to go to school.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit, effective March 26, 2017, that was without good cause attributable to the employer. Before Ms. Archer elected to cease contact with the employer, there was no agreement between Ms. Archer and her supervisor regarding whether Ms. Archer would be continuing to work full-time, would be moving to part status, or would be separating from the employment. Ms. Archer communicated her voluntary quit by ceasing to appear for shifts and ceasing contact with the employer subsequent to March 26, 2017. Ms. Archer was away from the employment for two months before she made contact with the employer at the urging of a state authority and as a condition of receiving public assistance benefits. Ms. Archer quit due to her dissatisfaction with the work, due to her school plans that fell through, and by being absent for many more than three consecutive shifts without notifying the employer and in violation of the employer's attendance policy.

Because Ms. Archer voluntarily quit the employment without good cause attributable to the employer, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Archer must meet all other eligibility requirements. The employer's account shall not be charged for the benefits for the period beginning the entry date of this decision.

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 § 96.3(7)(a) and (b).

Ms. Archer received \$2,400.00 in benefits for the six-week period of July 2, 2017 through August 12, 2017, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Archer received constitute an overpayment of benefits.

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(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.

Neither the employer nor Ms. Archer participated in the fact-finding interview. The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence to establish that the employer did not receive appropriate notice of the July 25, 2017 fact-finding interview. The employer had the ability to present testimony from Mr. Steuhm or others with personal knowledge concerning the employer's receipt of the notice of the fact-finding interview. The employer elected not to present testimony from anyone with personal knowledge of that issue or any other issue related to this case. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

Because the claimant did not receive benefits due to fraud or willful misrepresentation and because the employer failed to participate in the finding interview, the claimant is not required to repay the overpaid benefits and the employer's account may be charged for the overpaid benefits. The employer's account shall not be charged for benefits for the period beginning August 13, 2017.

DECISION:

The July 26, 2017, reference 01, decision is reversed. The claimant voluntarily quit the employment effective March 26, 2017 and without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,400.00 in benefits for the six-week period of July 2, 2017 through August 12, 2017. The claimant is not required to repay the overpaid benefits.

The employer's account may be charged for the overpaid benefits. The employer's account shall not be charged for benefits for the period beginning August 13, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs