

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDY CARTER**  
Claimant

**APPEAL NO: 13A-UI-09919-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 07/21/13  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 21, 2013, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 24, 2013. The claimant participated in the hearing. Jason Mucciarone, Human Resources Generalist; Tim Cordes, Factory Manager Component Paint; and Sandra Linsin, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The first 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 paint line operator for Allsteel from November 12, 2012 to June 5, 2013. She voluntarily left her employment due to a conflict with a co-worker.

On April 5, 2013, the claimant's supervisor, Tim Cordes, noticed her demeanor had been different for a few days and called her to his office to find out if there was something wrong. The claimant told him she was being harassed by co-worker Kerry Frye. Mr. Frye repeatedly sent her text messages, mostly outside of work, stating he was going to call the Department of Human Services (DHS) and have her children removed, his girlfriend was going to beat her up, he was going to call the police and state the claimant's mother used illegal drugs, and she had "better watch (her) back," among other comments of the same nature. After hearing this information Mr. Cordes took the claimant to human resources and they met with Human Resources Generalist Jason Mucciarone. She told them she and Mr. Frye were part of the same social group that got together outside of work and the claimant no longer wanted to be part of that group. Mr. Mucciarone asked the claimant to show him the text messages but she

explained she had just changed her phone number and deleted her Facebook page and consequently did not have any to show him. The claimant told Mr. Mucciarone it was only happening outside of work and when asked if she wanted to make a formal complaint the claimant said she “didn’t want to make a big deal of it right now” but she wanted to report it to the employer so it was on record.

The employer moved the claimant to a different area of the paint line, approximately 300 feet from Mr. Frye, but had to place her in close proximity to him on some occasions depending on how many paint line employees were going to be gone on a given day. When that happened the claimant told Mr. Cordes she was uncomfortable and he told her that if Mr. Frye bothered her in any way he wanted her to report it to him immediately but he never received any further information from the claimant about the situation.

The claimant did not receive any additional text messages after she changed her phone number but indicated Mr. Frye verbally harassed her on occasion. She never told the employer she was going to leave her job because of the situation or that she wanted to proceed with a formal report and complaint but did seek other positions within the company without success. On May 29, 2013, she drove to the plant but decided she could not go in and then left. She called the automated attendance line and said she would not be in that day and then did not call or show up for work for the next three workdays and the employer determined she voluntarily quit her job by failing to call or show up for work for three days.

The employer did not participate in the fact-finding interview held on August 20, 2013, at 9:55 a.m.

#### **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 section 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.

While the claimant was harassed by Mr. Frye, the text messages stopped after she changed her phone number prior to going to human resources regarding the situation April 5, 2013. Consequently, she could not show the employer any of the harassing text messages or demonstrate when they occurred. She did state that most of the harassment occurred outside of work, often at a bar where the employees gathered, although some harassment did take place while the claimant was at work. The employer was concerned and ready to address the situation but the claimant did not want to make a formal complaint or “make a big deal of it right

now” but simply wanted a record that she had complained to the employer about Mr. Frye. Her supervisor moved her away from Mr. Frye so she was approximately 300 feet from him but occasionally had to move her closer in proximity to him if several employees were absent on a particular day. The claimant talked to Mr. Cordes one more time after the April 5, 2013, meeting with human resources and told him Mr. Frye had threatened to call DHS and have her children removed but again she did not want the employer to take any action, just simply make a record of their conversation.

Although this was an unfortunate situation for the claimant, she effectively tied the employer’s hands by stating she did not want to file a formal complaint but just wanted to have a record of the events. The employer responded immediately to the situation when notified about it in April 2013 by moving the claimant away from Mr. Frye’s work station but the claimant never went back to human resources to ask that the employer take formal action against Mr. Frye. Under these circumstances, the administrative law judge must conclude that the claimant has not demonstrated that her leaving was for unlawful, intolerable or detrimental working conditions, or actions attributable to the employer, as required by Iowa law. Therefore, benefits must be denied.

The remaining issues are whether the employer participated in the fact-finding interview and whether the claimant shall be required to repay her unemployment benefits.

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, -b.

871 IAC 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.

A fact-finding interview was scheduled regarding this matter August 20, 2013. The employer did not participate personally. It sent a letter stating the claimant’s hire and separation dates and, “The claimant voluntarily quit by job abandonment. Specifically, the claimant stopped reporting to scheduled work and did not contact management. Continued work was available. We request relief of charges.” While that was factually correct, the claimant participated personally and stated she voluntarily quit due to harassment and the employer was not present to provide much needed additional information. The employer’s letter does not constitute meaningful participation as defined by Iowa law. Therefore, the claimant’s overpayment of unemployment benefits is waived and the employer’s account shall be charged.

**DECISION:**

The August 21, 2013, reference 04, 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's overpayment of unemployment benefits is waived.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs