

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS G CARPENTER
Claimant

APPEAL 17A-UI-05439-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

**OC: 04/30/17
Claimant: Respondent (2)**

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 May 15, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant quit his employment due to a change in his contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on June 8, 2017. The claimant, Thomas G. Carpenter, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Pilot Travel Centers, L.L.C., participated through Paul Bell, Travel Center General Manager. The administrative law judge took official notice of the administrative record and the fact-finding documentation.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can 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, most recently as a maintenance team member, beginning on August 12, 2014. As a full-time employee, claimant was guaranteed a minimum of 30 hours per week. According to the fact-finding documentation, claimant's hours had been reduced to approximately 36 hours per week three months prior to the end of his employment. Claimant last reported to work on April 19, 2017. Bell testified that claimant never reported to work after April 19, and he did not have any contact with the employer to explain his absences. At the time claimant stopped reporting to work, he was not at risk of being discharged or laid off.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$0.00, since filing a claim with an effective date of April 30, 2017, for the five weeks ending June 3, 2017. Claimant's benefits are currently locked based on a different separation

from employment. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.26(1) provides:

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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). Here, there is no evidence that claimant experienced a change in his contract for hire. The testimony in the record establishes that claimant was guaranteed 30 hours per week, and he received at least 30 hours per week.

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:

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

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). Claimant did not participate in the hearing, and he did not submit any documentation to show good cause for leaving his employment. 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). Claimant's statements to the fact-finder demonstrate intent to quit his employment, and his failure to return to work or contact the employer is an overt act carrying out that intention. Claimant's decision to end his employment was without good cause attributable to the employer. Benefits are withheld. As claimant has not received any benefits since this separation from employment, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The May 15, 2017 (reference 01) unemployment insurance decision is reversed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn