

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA B CARR
Claimant

JAMES CHIROPRACTIC & SPORTS REHAB
Employer

APPEAL 16A-UI-02882-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/07/16
Claimant: Respondent (1)**

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 February 25, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2016. Claimant participated. Employer participated through manager/co-owner Deanne James and chiropractor/co-owner Dr. Jason James.

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 as a chiropractor assistant/receptionist from June 2014, and was separated from employment on February 4, 2016, when she quit.

Claimant quit work on February 4, 2016. Claimant testified that she quit because her most recent payroll check for her was returned because of insufficient funds. This was the third payroll check since November 2015 that claimant received from the employer that was returned because of insufficient funds. Claimant's payroll check on December 4, 2015, was returned for insufficient funds. Claimant was told by the employer it was because the employer had just opened a new business account in a different name. Claimant's payroll check on November 13, 2015, was returned for insufficient funds. Because claimant's payroll check was returned for insufficient funds, she had three personal checks that she had written be returned for insufficient funds in her account. Each time claimant told the employer about her payroll check she was paid in cash. The employer also paid for any overdraft fees that claimant was charged.

Claimant testified that throughout her employment the employer had written other business checks that were returned for insufficient funds.

Ms. James and Dr. James testified that claimant quit after the employer asked her to take a drug test on February 4, 2016 and she refused and chose to quit. The employer has a written drug and alcohol policy. Claimant was given a copy of the policy, but she refused to sign or give back a signed receipt of the drug and alcohol policy. There is a uniform standard that if claimant refused to take a test or if there was a confirmed positive test it is immediate grounds for dismissal. The employer does not provide training to supervisory personnel regarding drug and alcohol abuse. The policy does allow for reasonable suspicion tests. The employer found on February 2, 2016, claimant's Facebook that was open on the employer's computer. Ms. James testified she observed that claimant was messaging former patients and they were selling her prescription drugs. An employee reported to Ms. James around January 22, 2016 that claimant had smelled like marijuana and when asked, claimant said she smoked marijuana over her lunch hour. The employee said the incident was observed on January 7, 2016. The employee also said her husband observed the incident. Ms. James was not able to speak to the employee's husband to confirm the incident until January 30, 2016; when Ms. James spoke with the employer's husband, he confirmed that claimant admitted to using marijuana. Claimant was off work the first couple of days in February. Based on reasonable suspension, on February 4, 2016 (the first day claimant was in the office in February), Ms. James requested claimant perform a drug test. Ms. James told claimant the reasons why she was being requested to take a drug test. Ms. James told claimant if she passed the drug test she would still have a job with the employer, but if she did not pass or if she refused, then she would not have a job. Ms. James testified that instead of taking the drug test, claimant refused and told her she quit. Ms. James testified that claimant stated she would not pass the test. Claimant then wrote out a letter/note for the employer. The note letter was not provided, but Dr. James read the letter into the record and it stated, "I Laura Carr have decided to quit because I am refusing to take drug test." Claimant signed and dated it on February 4, 2016. The entire document was hand written. Claimant also signed another letter/note/receipt that she received cash for her most recent paycheck that was returned for insufficient funds.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit

requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

It is undisputed by the parties that on February 4, 2016, claimant came into the employer and told Ms. James that she quit. Since November 2015, the employer issued three checks to claimant that were returned because of insufficient funds. On at least one occasion, this caused claimant to be overdrawn on three of her personal checks. The employer paid cash to claimant each time she brought it to the employer's attention that her payroll check was returned for insufficient funds. The employer also paid for any overdraft fees. Finally, it is undisputed that on February 4, 2016, the employer requested claimant to take a drug test and claimant refused. The employer has a written alcohol and drug testing policy; however, it is noted that claimant did not sign for any acknowledgement of having received the employer's policy and testified she never saw a policy. The main disagreement between the parties is when claimant quit. The employer presented evidence that claimant quit only after she refused to take a drug test. Claimant testified she quit immediately because of the insufficient funds for her check(s) and then was asked to take a drug test, which she refused because she had already quit.

Based on the evidence presented, this administrative law judge finds that even though the letter claimant wrote acknowledging she quit was not provided for the hearing, the employer's testimony regarding the letter ("I Laura Carr have decided to quit because I am refusing to take drug test.") was credible, and claimant quit after having been requested to take a drug test. Claimant's quitting because she was asked to take a drug test based on reasonable suspicion would likely not be considered good cause attributable to the employer; however, the analysis does not stop there. The Iowa Supreme Court has stated "[n]othing in the department's regulations suggests that a claimant must rest [claimant's] entire claim for unemployment compensation on one reason for leaving a job." *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 540 (Iowa 1985). In *Taylor*, the Court stated, "the department must consider all reasons which may have combined to give Taylor good cause to quit, then consider whether any of those reasons was a cause attributable to the employer Hurst." *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 540-541 (Iowa 1985) (emphasis added).

Here two reasons were presented as to why claimant quit, refusing a drug test and payroll checks that were returned for insufficient funds. This administrative law judge must consider both reasons and determine if one "was a cause attributable to the employer[.]" *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 540-541 (Iowa 1985). In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). Although claimant's refusal to submit to a drug test may not have been a good cause reason attributable to the employer to quit, the employer's failure on three separate occasions in an approximately three month period to provide payroll checks to claimant with sufficient funds, especially when it caused claimant on at least one occasion to suffer overdrafts on her personal checks, is a good cause reason attributable to the employer to quit. See *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). Because there was a good cause reason that claimant quit that was attributable to the employer (three insufficient fund payroll checks), benefits are allowed. See *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 540-541 (Iowa 1985); See also *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

DECISION:

The February 25, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
http://www.youtube.com/watch?v=_mpCM8FGQoY