

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA SCHLOTZHAUER**  
Claimant

**APPEAL NO: 18A-UI-07810-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 11/05/17**  
**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 July 16, 2018, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 13, 2018. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Diane Scarf, Dietary Service Manager and Alyce Smolsky, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The 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 part-time dietary aide for Care Initiatives from December 13, 2017 to June 28, 2018. She voluntarily left her employment because she was unhappy with the amount of hours she was receiving.

At the time of hire, the claimant asked for 20 to 30 hours per week and the employer told her she would try to give her that number of hours but told the claimant if the employer's census dropped, every employee's hours are cut across the board. The employer did not guarantee the claimant a certain number of hours.

The claimant worked nearly 30 hours per week until the census went down approximately February 1, 2018, at which time she was receiving about 20 hours per week. The census was back up in March 2018 and the claimant received 30 hours but it fell again in mid-April 2018 at which time the claimant received 15.99 hours the week of April 15 through April 21, 2018. She worked approximately 20 hours again until receiving 15.01 hours the week of April 29 through May 6, 2018. She then worked approximately 20 hours until the week of May 12 through

May 19, 2018, at which time she worked 11.89 hours. The census has not recovered to the point the claimant was working 30 hours again but she was working 20 hours per week.

Around June 15, 2018, when the dietary service manager was on vacation, the claimant talked to the administrator and said she needed more hours or she was going to quit her job. The dietary service manager returned June 26, 2018, and the claimant told her that her last day would be June 29, 2018, but the claimant called in sick that day. June 28, 2018, was the claimant's last day. The employer had continuing work available for the claimant.

The claimant has claimed and received unemployment insurance benefits in the amount of \$260.00 for the two weeks ending July 21, 2018.

The employer participated in the fact-finding interview through written statements. Amanda Rivera, Unemployment Claims Consultant, faxed in her name, phone number and written documents for the fact-finding interview but did not receive a phone call from the fact-finder. Instead Natasha Barlow, State Representative, was called by the fact-finder. She looked up information but is unfamiliar with the fact-finding process in Iowa and referred the fact-finder to the written statements and documents.

#### **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 § 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.

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.

The claimant was never guaranteed a certain number of hours. The employer told the claimant at the time of hire that if the census dropped, all employees' hours would be cut and the claimant accepted the job under those conditions. There were three weeks when the employer was unable to give the claimant at least 20 hours as she requested at the time of hire but the other weeks of her employment she worked between 20 and 30 hours.

The claimant has not demonstrated that her leaving was for unlawful, intolerable, or detrimental working conditions or that her leaving was attributable to the employer, as those terms are defined by Iowa law. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 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.

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 section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer participated in the fact-finding interview within the meaning of the law. It provided the name and phone number of an unemployment claims consultant but that representative was never called by the Department. Instead the fact-finder contacted a state representative who had to tell the fact-finder to use the written documentation because she had no knowledge of the situation. Because the employer's representative did not receive a phone call from the Department, the employer cannot be punished by waiving the claimant's overpayment of benefits and charging that amount to the employer's account. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$260.00 for the two weeks ending July 21, 2018.

**DECISION:**

The July 16, 2018, reference 05, 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 has received benefits but was not eligible for those benefits. The employer participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$260.00 for the two weeks ending July 21, 2018.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn