

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRICK W CLOUSE
Claimant

APPEAL NO. 13A-UI-11176-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMMA JEANS INC
Employer

OC: 09/01/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer participation at Fact Finding

STATEMENT OF THE CASE:

Emma Jeans (employer) appealed a representative's September 24, 2013, decision (reference 01) that concluded Derrick Clouse (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 24, 2013. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Lynn Driver, President; Eva Neese, Assistant Kitchen Manager; and Brenda Walter, Waitress. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 23, 2013, as a full-time cook. On June 17, 2013, the president personally issued the claimant a \$100.00 advance before the president left town. On June 20, 2013, the claimant arrived for his regularly scheduled shift and told the waitress that the president authorized a \$100.00 advance. The waitress questioned the claimant because the claimant did not have a signed slip of paper from the president. The waitress told the claimant to go talk to the assistant kitchen manager to get approval. The claimant walked toward the assistant kitchen manager but never talked to her. He returned to the waitress after a few minutes and said he had approval for the advance. The waitress gave the claimant the \$100.00 advance and the claimant walked off the job.

On June 20 and 21, 2013, the claimant texted the president that he had lied to him when he said his aunt and father died and asked for time off. He had also lied when he said his son broke his arm and he took time off. The claimant told the president he wanted to see the business fail. On June 22, 2013, president told the claimant to return the \$100.00 or he would contact law enforcement. The claimant did not and the president contacted law enforcement.

The president deducted the first \$100.00 advance from the claimant's final paycheck. On June 25, 2013, the claimant paid the president for the \$100.00 he took on June 20, 2013.

The claimant filed for unemployment insurance benefits with an effective date of September 1, 2013. He received \$678.00 in benefits after the separation from employment. The employer participated by documentation at the fact-finding interview on September 20, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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.

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). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant walked off the job and stopped appearing for work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

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.

The claimant has received unemployment insurance benefits that he was not entitled to receive. The employer meaningfully participated personally in the fact-finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

DECISION:

The representative's September 24, 2013, decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant has received unemployment insurance benefits that he was not entitled to receive. The employer meaningfully participated personally in the fact-finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css