IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMANDA VANDENHEMEL
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL NO: 17A-UI-01683-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/01/17
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 February 3, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 8, 2017. The claimant participated in the hearing with witness/security officer Donnie Mongar. Stewart Holloway, Operations Manager; Brandyn Veith, Operations Manager; and Keith Ottoson, Account Manager at CDS; participated in the hearing on behalf of the employer. Employer's Exhibit 1 was admitted into evidence.

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 full-time security officer for Per Mar Security & Research from July 1, 2016 to January 5, 2017. She voluntarily left her employment by failing to participate in a meeting with the employer about her new assignment.

On December 28, 2016, the claimant emailed Operations Manager Brandyn Veith stating she was having issues with a co-worker and her supervisor. She stated Supervisor Keith Ottoson did not listen to or address her concerns and she was also "tired of just sitting at a desk" for the last six years (Employer's Exhibit 1). She asked if there were any ARO or patrol shifts she could apply for that were "active and out of here?" (Employer's Exhibit 1). She stated she was "just at the point of quitting right now" and concluded by saying, "If any options are there I'd appreciate it if not I guess it's time to leave this place and security" (Employer's Exhibit 1). Mr. Veith was not in charge of the CDS account and consequently notified the claimant he forwarded her email to Operations Manager Stewart Holloway. On December 30, 2016, the claimant emailed Mr. Veith asking, "So are there any better accounts or patrol available?" (Employer's Exhibit 1). She then expanded on her complaints about her co-worker and manager and ended her email by stating, "I'm not going to wait long because I don't need to be

going to work where people refuse to talk to me because Keith or start issues like Dan" (Employer's Exhibit 1). Mr. Holloway was out of the office until January 2, 2017, and responded to the claimant at 8:41 a.m. January 3, 2017. At that time he expressed concern that the claimant had not brought any of the issues she had regarding her assignment to him and stated, "It sounds like CDS is not the place for you so effective immediately I'm pulling you from the account. Let's plan on meeting at the office tomorrow 1/4/17 at 1:30 p.m. We can discuss your reassignment at that point" (Employer's Exhibit 1). The claimant responded by repeating her complaints about her co-worker and manager at CDS and saying, "If there is nothing better for me to work at then I will work at CDS and put my 2 weeks in when I decide on another job. You can't just rip me from a job when I have done nothing wrong but report someone" (Employer's Exhibit 1). Mr. Holloway wrote back to the claimant and said she had "made it quite clear that you were not happy at CDS due to you being mistreated by Keith and other employees. I'm removing you from CDS to get you out of the situation you are in. What I can't do is keep you at an account that you feel like you are being mistreated. I have other options for you and will discuss them with you tomorrow at my office at 1:30 p.m…I am planning on sitting down with Keith and Dan to figure out what else needs to change there as well. I will see you tomorrow to discuss this further" (Employer's Exhibit 1). The claimant replied she would be "going to Workforce about this" (Employer's Exhibit 1). She believed she was being disciplined while her co-worker and manager "get to sit there pretty. This is wrong on so many levels so I'll take this further myself…You're just sweeping me out instead. When it should be him getting moved. I know a lot of places that are going to see the wrong in this" (Employer's Exhibits 1). Mr. Holloway wrote back and stated, "I'm not sweeping you out. If you want to meet and discuss other assignments that I have for you then great. If you don't that is your option as well. These issues that you are having could have been dealt with if you would have brought them to my attention. Your emails to Brandyn stated you wanted out of CDS so I pulled you from CDS. This move was at your request. I will be in the office tomorrow at 1:30 p.m. to discuss this further if you do not show then I will assume you are not interested in working" (Employer's Exhibit 1). The claimant replied, "Clearly you are because you already replaced me and I wasn't stupid and figured that out. You have no other accounts open. I have also reported this to Keith who said he told you and said to deal with it and reported to Brandyn but no one cared so don't say I didn't report it to you and act like you're going to do something finally besides get rid of me and refuse to let me get the company in trouble" (Employer's Exhibit 1). Mr. Holloway did not respond to the claimant's last email because they were already scheduled to meet the following day but the claimant did not show up for the meeting and the employer determined the claimant voluntarily left her employment. On January 5, 2017, the claimant returned her uniforms. She testified she called three times to talk to Mr. Holloway further but the third time she called the receptionist stated Mr. Holloway did not want to talk to her. She said the receptionist also told her to turn in her uniforms, both charges which the employer denies as Mr. Holloway never told the receptionist he did not wish to speak to the claimant and the receptionist had no knowledge of the claimant's work situation or any authority to tell an employee to turn in her uniforms.

The claimant has claimed and received unemployment insurance benefits in the amount of $2,806.00 for the nine weeks ending March 4, 2017.

The employer participated personally in the fact-finding interview through the statements of Operations Manager Stewart Holloway.

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:
>
> 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 denies that she quit her job, her words and actions lead to the conclusion she voluntarily left her employment. In the claimant's first email to Mr. Veith she spent more than half of it stating she wanted another account as she was tired of "just sitting at a desk." She ended that email by indicating if there were no other job options available within the company "I guess it's time to leave this place…" A plain reading of that email would cause a reasonable person to believe the claimant wanted to be assigned to a new account and the employer made arrangements to accommodate that request. Instead of understanding the employer was attempting to remove her from a negative environment at CDS, however, the claimant chose to interpret the employer's decision to remove her as a negative, disciplinary action despite the employer's attempts to reassure her that was not the case through the several emails that passed between the parties. The employer scheduled a meeting with the claimant January 5, 2017, to discuss a different placement for the claimant but the claimant chose not to notify the employer through email, the method they had been using to communicate, that she was unable to attend the meeting, and instead left the employer with the reasonable conclusion she was leaving her employment. The employer's last email prior to the meeting stated if the claimant did not attend the meeting the employer would "assume you are not interested in working." The claimant stated that she tried to call the employer because he stopped responding to her emails but he only failed to respond to her final email which defiantly and falsely claimed the employer had replaced her and had no other accounts open and was "getting rid of her." The reason the employer did not respond to that email was due to the fact they had a meeting scheduled the next day and he believed the matter could be resolved at that time. Additionally, although the claimant claims she called the employer three times before the receptionist told her he did not want to talk to her and also told her to return her uniforms, it strains credibility that a receptionist who lacked any knowledge of the claimant's employment situation or the authority to instruct her to return her uniforms would do so, especially when the employer never directed her to take those actions.

Under these circumstances the administrative law judge concludes the claimant voluntarily left her job through her email statements and failure to report to the scheduled meeting January 4, 2017, and she has not established a good cause reason attributable to the employer for her leaving as is required 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 unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Operations Manager Stewart Holloway. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of $2,806.00 for the nine weeks ending March 4, 2017.

DECISION:

The February 3, 2017, reference 01, 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 personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of $2,806.00 for the nine weeks ending March 4, 2017.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/rvs