

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KINZY C GRANT
Claimant

4 TOUCH LLC
Employer

APPEAL NO. 14A-UI-08034-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/06/14
Claimant: Respondent (4)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 6, 2014, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on August 26, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Stacey Earley participated in the hearing on behalf of the employer with a witness, Dan McCarty. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits and is repayment of the overpayment required?
Is the employer subject to charge for benefits paid?

FINDINGS OF FACT:

The claimant worked full time for the employer from February 2013 to June 27, 2014. She was hired as an office assistant at \$15 per hour. Dan McCarty is the company president.

After the claimant returned to work after maternity leave in April 2014, she was given additional job responsibilities assisting the project manager, Russell Zimmerman. Later in April, when she had her annual review with McCarty and Zimmerman, she was given a 50-cent-per-hour raise. She was dissatisfied with the amount of the raise because of the new job duties, but did not express her dissatisfaction at that time.

Sometime in May, the claimant asked to meet with McCarty and Zimmerman. During the meeting the claimant was very upset and was crying and informed them that she did not believe the raise she was given was fair. McCarty told the claimant that he believed the raise was fair and she was not a good fit for the project assistant job. He said that her office assistant duties were being neglected, and he brought two other managers into the meeting to support this. The claimant was upset at McCarty's handling of the situation.

The claimant was also uncomfortable with McCarty's asking her how things were at home. McCarty asked the question because he knew the claimant's husband was laid off and he felt the situation might be affecting her work. There were a couple of times when McCarty briefly massaged her shoulders—once before she went on maternity leave and once afterward. The claimant never said anything to McCarty or anyone else about this. She was not signaled out for this because she saw him give other employee's shoulder massages.

On June 27, 2014, the claimant informed McCarty that she was quitting effective July 11, 2014. McCarty told the claimant that June 27 would be her last day. The claimant said she would work until July 11 but McCarty said it wasn't necessary. The claimant quit because she believed she should have received a raise and was uncomfortable with McCarty's treatment of her as explained above.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 6, 2014. She filed for and received a total of \$2,772 in unemployment insurance benefits for the weeks between July 13 and August, 2014.

The employer through Dan McCarty and Stacey Early and the claimant participated in the fact-finding interview on July 24, 2014.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

The first reason for the claimant's quitting was that she believed she was entitled to more of a raise based on her additional job duties. The employer never promised her a raise or told her that she would receive any specified increase in her pay. It is the employer's prerogative to decide whether an employee should receive a raise or the amount of raises. No good cause attributable to the employer has been shown based on the amount of the raise the claimant received.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe McCarty's testimony that he asked about how things were at home due to concern for the claimant not an attempt to pry. On the other hand, I believe the claimant's testimony that McCarty on couple of occasions massaged the claimant's shoulders. She admitted, however, that she never objected and the last such incident took place in April. Under the circumstances, I cannot conclude the evidence shows the claimant left work due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.25(38) provides:

Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Based on this rule, the claimant would be eligible for benefits for the week of July 6 through 12, because the employer prevented the claimant from working that week by informing her that June 27 would be her last day when claimant gave notice that she was leaving after July 11. Since she voluntarily quit employment without good cause attributable to the employer, she would be disqualified as of July 13, 2014.

The unemployment insurance law generally 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. But a claimant is not required 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 § 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 \$2,772.00 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for the overpaid benefits. It will be charged for benefits for the week ending July 12.

DECISION:

The unemployment insurance decision dated July 6, 2014, reference 01, is modified in favor of the employer. The claimant was eligible for benefits for the week ending July 12, 2014. She is disqualified from receiving unemployment insurance benefits effective July 13, 2014, until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She was overpaid \$2,772.00 which she is required to repay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs