

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAMERON A BISHOP
Claimant

FRIDLEY THEATRES LLC
Employer

APPEAL 21A-UI-06941-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/29/20
Claimant: Respondent (2)**

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/appellant, Fridley Theatres Inc., filed an appeal from the March 3, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 17, 2021. The claimant, Cameron A. Bishop, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.. The employer participated through Lisa Dotson. Alison Meyer also testified.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-4 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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: The claimant was employed part-time as a line cook and was separated from employment on November 27, 2020, when he quit the employment. Continuing work was available. Claimant was not laid off due to a lack of work.

Claimant was absent from work October 29, 2020 through November 13, 2020 due to exposure to COVID-19. Employer did not pay claimant for his time off of work. Employer requested claimant present evidence of a COVID-19 test and claimant did not. Claimant was still allowed to return to work and continued to perform work November 14-26, 2020.

Claimant was scheduled to work on November 27, 2020 from 12:00 to 8:00 p.m. Per employer's policy, claimant was expected to notify his manager four hours prior to a shift and try to coordinate coverage if he was unable to work. Employer's policy also states two days of no-call/no show will be treated as a voluntary quit due to job abandonment (Employer Exhibit 4.) Claimant previously had been trained on employer policies (Employer Exhibit 3) and had been issued a warning most recently on November 7, 2020 for failure to properly report absences and obtain coverage (Meyer testimony).

Employer stated claimant was a no call/no show to both shifts on November 27 and 28, 2020. Prior to quitting, claimant may have been unhappy with the handling of his time off (Employer Exhibits 1-2) but employer reported there was no argument or indication claimant would not be returning to work. Claimant did not participate in the hearing. Employer tried to email, call and text claimant, who was unresponsive. Claimant did not return to work or contact employer again and separation ensued. Employer assumed claimant quit based upon his not reporting to work and unresponsiveness to employer contacts.

Claimant has earned subsequent wages since this employment ended.

The administrative record reflects that claimant has not received unemployment benefits since filing a claim with an effective date of November 29, 2020. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. The employer did not participate because it did not receive a notice of interview. Ms. Dotson denied receipt of voicemail from IWD.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

The credible, undisputed evidence is claimant discontinued reporting to work after November 26, 2020 and would not respond to the employer's attempts to contact him. Claimant did not participate in the hearing to refute the employer's evidence. Employer credibly testified continuing work was available to claimant and he was not laid off due to a lack of work. While claimant may have had personally good reasons to quit, he has failed to meet his burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. Accordingly, benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, he did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). Therefore, the issue of relief of charges is moot.

DECISION:

The March 3, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant's separation from the employment was without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 25, 2021

Decision Dated and Mailed

jlb/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.