

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE K FLOCKHART
Claimant

APPEAL NO. 15A-UI-11951-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JEWELL ANIMAL HOSPITAL PC
Employer

OC: 10/04/15
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 23, 2015, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had voluntarily quit on September 14, 2015 for good cause attributable to the employer. After due notice was issued, a hearing was held on November 13, 2015. Claimant Katherine Flockhart participated. Attorney Justin Deppe represented the employer and presented testimony through Lisa Hindle. Exhibits One, Two, Three, A through D, and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and of that this employer was the sole base period employer for purposes of the claim.

ISSUES:

Whether Ms. Flockhart separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

Whether Ms. Flockhart was overpaid benefits.

Whether Ms. Flockhart must repay benefits.

Whether the employer's account may be charged for benefits paid to Ms. Flockhart.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Hindle, D.V.M., owns and operates Jewell Animal Hospital, P.C. Dr. Hindle is also employed at a vet hospital in the Des Moines metropolitan area. Dr. Hindle is married to Christy Hindle. Dr. Hindle's former spouse is Justin Deppe, the employer's attorney in this matter. Katherine Flockhart was employed by Dr. Hindle as a part-time receptionist and animal care attendant at Jewell Animal Hospital from December 2014 until Monday, September 14, 2015, when she voluntarily quit.

On Saturday, September 12, 2015, Ms. Flockhart was at a local drinking establishment with Dr. Hindle, Christy Hindle and one or more additional people. While the group was socializing, Ms. Flockhart and Christy Hindle conspired to make a bogus report of animal abuse concerning Mr. Deppe's treatment of a dog he had adopted from an animal adoption agency. The administrator of the animal adoption agency was an acquaintance of Ms. Flockhart. Ms. Flockhart's and Christy Hindle's goal was to obtain full possession of the dog for the Hindle household and to sever Mr. Deppe's ownership rights concerning the dog. At the time, the dog was at Dr. Hindle's home as a companion to the daughter of Dr. Hindle and Mr. Deppe. Ms. Flockhart used her cell phone to make the report of alleged animal abuse.

On Sunday, September 13, 2015, the animal adoption agency seized the dog from Dr. Hindle's residence. The seizure of the dog took Dr. Hindle and Mr. Deppe by surprise. Thereafter, the pair cooperated in recovering the family pet. Mr. Deppe had to take legal action to recover possession of the dog.

On the morning of Monday, September 14, 2015, Mr. Deppe and Dr. Hindle were in the midst of addressing the animal seizure when Mr. Deppe stopped in to Jewell Animal Hospital to speak with Ms. Flockhart to ask her what had been reported to the animal shelter concerning the dog. Jewell Animal Hospital was at that time open for business. Ms. Flockhart was in the back, engaged in cleaning activities. Mr. Deppe was on his cell phone with Dr. Hindle at the time he entered the business and remained on the phone with Dr. Hindle while he attempted to speak with Ms. Flockhart. Dr. Hindle was on her morning commute to her employment in the Des Moines metropolitan area. Dr. Hindle heard the conversation that took place between Mr. Deppe and Ms. Flockhart. When Mr. Deppe entered the business he called "hello" a couple times. Ms. Flockhart recognized Mr. Deppe's voice and did not respond to either call. Ms. Flockhart then entered the front area of the business. As she did that, she repeatedly said, "I'm not involved." After Mr. Deppe was unsuccessful in getting information from Ms. Flockhart, he left the business. Mr. Deppe had not yelled, had not employed profanity, and had not done anything to harass or intimidate Ms. Flockhart. Ms. Flockhart knew that Mr. Deppe's office was only a short distance away and was concerned that he might return to further engage her. Ms. Flockhart attempted to reach Dr. Hindle by text message, but Dr. Hindle elected not to respond to those text messages. Dr. Hindle did take time that day to speak to law enforcement regarding the animal shelter's seizure of the dog. At 4:45 p.m., Ms. Flockhart sent the following text message to Dr. Hindle:

Since I'm so untrustworthy and unreliable I don't know why I'm giving notice...oh...bc all of that is a lie and I'm not like that. I quit. I'll save you the trouble of firing me. How'd that conversation go about having each others backs? I'll come get my shit and give u my key wed.

Prior to sending the text message, Ms. Flockhart had heard that Dr. Hindle had referred to her as untrustworthy and unreliable when Dr. Hindle was speaking to law enforcement concerning the animal abuse allegation and the dog seizure.

Dr. Hindle at no time communicated to Ms. Flockhart that her employment at Jewell Animal Hospital was in jeopardy.

Ms. Flockhart established a claim for unemployment insurance benefits that was effective October 4, 2015. Ms. Flockhart has received \$1,092.00 in benefits for the seven-week period of October 4, 2015 through November 21, 2015. Jewell Animal Hospital, P.C., is the sole base period employer for purposes of the claim.

On October 22, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Flockhart's separation from the employer. Dr. Hindle participated in fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. Ms. Flockhart elected to involve herself in the personal affairs of Dr. Hindle and Mr. Deppe, and subjected herself to the foreseeable consequences of her actions, by conspiring with Christy Hindle to make a bogus animal abuse claim concerning Mr. Deppe. Mr. Deppe did not engage in any harassing, intimidating, or otherwise inappropriate conduct when he went to Jewell Animal Hospital on the morning of September 14, 2015 to speak with Ms. Flockhart. Mr. Deppe's brief presence at the business did not give rise to intolerable or detrimental working conditions that would have prompted a reasonable person to quit the employment. Dr. Hindle's failure to respond to Ms. Flockhart's text messages and her characterization of Ms. Flockhart as untrustworthy and unreliable did not rise to the level of intolerable or detrimental working conditions that would have prompted a reasonable person to quit the employment.

Because Ms. Flockhart voluntarily quit the employment without good cause attributable to the employer, and because Jewell Animal Hospital was the sole base period employer,

Ms. Flockhart is disqualified for benefits until 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 § 96.3(7)(a) and (b).

Ms. Flockhart received \$1,092.00 in benefits for the seven-week period of October 4, 2015 through November 21, 2015. Ms. Flockhart has been denied benefits as a result of this decision. The benefits constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Flockhart is required to repay the overpayment. The employer's account is relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The October 23, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment on September 14, 2015 without good cause attributable to the employer. The claimant is disqualified for benefits until 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 is overpaid \$1,092.00 in benefits for the seven-week period of October 4, 2015 through November 21, 2015. The claimant must repay the benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs