

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VALENTINE K EMILIO**  
Claimant

**APPEAL 19R-UI-06793-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHFIELD FRESH MEATS CORP**  
Employer

**OC: 05/26/19  
Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
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 filed an appeal from the June 13, 2019 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon his separation from employment. An appeal hearing was scheduled for July 18, 2019. The employer failed to participate at the date and time scheduled for the hearing. A default decision was issued on July 19, 2019 (Appeal No. 19A-UI-05057-DG-T). The employer filed an appeal to the Employment Appeal Board. The Employment Appeal Board issued a decision on August 23, 2019 finding that the decision of the administrative law judge dated July 19, 2019 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. Another appeal hearing was scheduled for September 10, 2019. The parties were properly notified of this hearing. The hearing was held by telephone on September 10, 2019. The claimant, Valentine K. Emilio, participated personally. The employer, Smithfield Fresh Meats Corp., participated through witness Rebecca Jackson and Jeffrey Bald. Claimant's Exhibit A was admitted. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the claimant's administrative records including the fact-finding documents.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?  
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: Claimant was employed full-time as a production worker. He began his employment on November 1, 2011 and was most recently re-instated to his position on September 15, 2015. His employment ended on March 2, 2019. Mr. Bald was claimant's direct supervisor. Claimant's

work hours were typically from 9:00 p.m. to 5:30 a.m.; however, on occasion he worked mandatory overtime hours.

The employer has a written policy which states that if an employee walks off the job, then they are considered to have voluntarily quit. Claimant received a copy of the policy. The employer has a written policy which states that overtime is optional after ten hours have been worked in a work day; however, overtime between eight hours and ten hours a day is mandatory if assigned. The employer typically assigns mandatory overtime based upon seniority; however, a supervisor does have discretion to assign employees with less seniority to a specific shift.

On March 1, 2019, claimant had spoken with human resources representative Becky Jacobsen about the fact he was not being assigned overtime hours that he wanted. Claimant had been verbally disciplined by supervisor Ramon when he came into work early on March 1, 2019 for trying to work overtime. When claimant visited with Ms. Jacobsen, he was told that the supervisors were allowed to choose the specific employees who were assigned to overtime and that the decision was not solely based upon seniority. Claimant was upset with the conversation he had with Ms. Jacobsen and told her that he would just work his normal hours then. She did not respond and he left the office. At that time, he was not aware that he had been assigned overtime hours for March 2, 2019.

On March 2, 2019, claimant was assigned to work mandatory overtime and his shift was to end at 7:30 a.m. that date. Claimant became aware that he was assigned to mandatory overtime on March 2, 2019 when he saw the notification that was posted. Claimant left on March 2, 2019 at 5:30 a.m. instead of working until 7:30 a.m., as was required. Claimant left his shift early because he determined himself that there was not enough work for three people to complete the cleaning that day. Claimant was also still upset about the conversation he had with Ms. Jacobsen. Claimant did not speak to his supervisor about leaving early on March 2, 2019. Claimant had received discipline regarding attendance during the course of his employment. There was continuing work available to the claimant had claimant not left on March 2, 2019.

Claimant received benefits of \$3,736.00 for the twelve weeks between May 26, 2019 and September 7, 2019. The employer participated in the fact finding interview through witness Becky Jacobsen.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

First, it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission

before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant knew that he was supposed to work until 7:30 a.m. on March 2, 2019. Claimant left early because he was upset about his conversation with Ms. Jacobsen and because he did not feel there was enough work to do. It is clear that claimant no longer desired to remain in the relationship of an employee with the employer and carried out his intention to terminate the employment by walking off the job. He did not request to speak to management when he left. As such, claimant voluntarily quit.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

In this case, claimant voluntarily quit rather than continuing with his assigned work. This is not a good cause reason attributable to the employer to voluntarily quit. Because claimant voluntarily quit by walking off the job without a good cause reason attributable to the employer, benefits are denied.

Alternatively, even if the administrative law judge found that claimant was discharged instead of voluntarily quitting, claimant's actions in failing to notify his direct supervisor that he was leaving prior to his shift ending were an intentional and substantial disregard of the employer's interests. An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Claimant's actions were job-related misconduct, even without prior warning. Benefits must be denied. Because benefits are denied, the issues of overpayment and chargeability must be addressed.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault,

the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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 un rebutted 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.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those 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. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7).

In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer participated in the fact-finding interview, the claimant is obligated to repay to the agency the benefits he received in connection with this employer's account, and this employer's account shall not be charged.

**DECISION:**

The June 13, 2019 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit work by walking off the job without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits of \$3,736.00 for the twelve weeks between May 26, 2019 and September 7, 2019 and is obligated to repay the agency those benefits. The employer participated in the fact-finding interview and its account shall not be charged.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn