

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SAMANTHA CLARK**  
Claimant

**COMES INVESTMENTS INC**  
Employer

**APPEAL 18A-UI-05383-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/08/18  
Claimant: Respondent (5R)**

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 filed an appeal from the April 30, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 29, 2018. The claimant participated and testified. The employer participated through Jill Comes. Employer's Exhibit 1 was received into evidence.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?  
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 began employment as a part-time dishwasher with the employer on June 6, 2017. After her first few months of employment, claimant's hours increased so that she was regularly working between 30 and 35 hours per week. Beginning the first week of April 2018, claimant hours dropped down to approximately 16 per week, then dropped again to nine per week, and again to approximately six per week. Claimant and the employer both agree that claimant is still employed, but is working fewer hours than she had been.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant has not been separated from employment.

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.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

In this case, claimant has not been terminated and did not resign. She has not been laid off. Rather, both parties agree that she is still employed. Therefore, there has been no separation from employment—disqualifying or otherwise.

The issue of whether claimant remains employed in the same capacity as when she was hired, or is partially unemployed, must be remanded to the Benefits Bureau for and initial investigation and determination. The issues of whether claimant has been overpaid benefits and if the employer's account is chargeable are reserved pending a determination on whether she is considered partially unemployed.

**DECISION:**

The April 30, 2018, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant has not been separated from employment and therefore cannot be disqualified from receiving benefits. The issues of overpayment and chargeability of the employer's account are reserved until such time as the issue Remanded to the Benefits Bureau of Iowa Workforce Development is resolved.

**REMAND:**

The issue of whether claimant is partially unemployed is Remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/scn