

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARA J EICKEMEYER**  
Claimant

**APPEAL NO: 18R-UI-09067-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NSK CORPORATION**  
Employer

**OC: 06/24/18**  
**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 filed an appeal from the July 12, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on July 11, 2018. No hearing was conducted when the employer/appellant failed to be available to participate.

Upon successful request for reopening to the Employment Appeal Board (EAB), the matter was remanded for a new hearing. After proper notice, a telephone hearing was conducted on September 18, 2018. The claimant participated personally. The employer participated through Katie Purdy, interim human resources coordinator. Jake Harris, production manager, also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 the claimant voluntarily quit the employment with good cause attributable to the 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 full-time as a team member in the scrap department and was separated from employment on May 25, 2018, when she quit without notice. Continuing work was available.

The claimant had previously worked for the employer in an office setting, and had done some work on the production floor, but not full-time duties. In April 2018, the claimant's job duties

shifted to team member on the scrap floor full-time. At one point, the claimant raised concern of the scrap pieces being "awkward" to hold based upon shape, but at no time did the claimant or employer discuss the claimant's prior work-issued physical. The claimant did not present any medical restrictions to the employer or for the hearing, which showed she was physically unable to do the job as requested.

On May 25, 2018, the employer conducted a meeting and verbally coached the claimant about her demeanor/being rude and speed of her production following a time study. The claimant became upset, stating she was who she was, and not changing. She verbally tendered her resignation at that time.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$622.00, since filing a claim with an effective date of June 24, 2018. The administrative record also establishes that the employer did not participate in the July 11, 2018 fact-finding interview or make a witness with direct knowledge available for rebuttal.

Ariel Bernard, claims analyst for Thomas and Company, the employer's unemployment vendor, was called and a voicemail was provided for her. She did not respond. There is no evidence that the employer attempted to submit written participation in lieu of attending the fact-finding interview. Ms. Bernard did not attend the hearing to explain why she did not respond to the call or voicemail for the fact-finding interview. Neither employer witness had information available about Ms. Bernard's participation.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are denied.

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 Admin. Code r. 871-24.25(21) , Iowa Admin. Code r. 871-24.25(27) and Iowa Admin. Code r. 871-24.25(28) provide:

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 section 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 section 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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (27) The claimant left rather than perform the assigned work as instructed.
- (28) The claimant left after being reprimanded.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. 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. 871 IAC 24.25.

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.* "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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has not met her burden of proof to establish she quit for good cause reasons within Iowa law.

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). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. \_\_\_-\_\_\_/\_\_\_-\_\_\_, Iowa Ct. App. filed \_\_\_, 1986). The administrative law judge is persuaded the claimant's shift to working primarily on the operator floor was not a change of agreement in hire, inasmuch as the claimant had previously performed the job duties as an operator, combined with office work. The claimant further acquiesced to the changes of not having office duties by not quitting sooner or bringing forth concerns during the period she worked in the position until she quit.

Further, the claimant emphasized she had physical restrictions which prevented her from performing the job as operator, but did not provide any proof of medical restrictions, which she made the employer aware of, which violated the duties or expectations of an operator. If the claimant had concerns with the workplace or job duties, she did not notify the employer to allow it to remedy the matter or take steps to preserve employment. Rather, the administrative law judge is persuaded the claimant became upset when verbally reprimanded on May 25, 2018, and quit without notice. Based on the evidence presented, the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**The next issue is whether the claimant must repay the benefits she has received.**

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits in the amount of \$622.00. The unemployment insurance law 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. 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 section 96.3(7)a, b.

The employer failed to participate in the fact-finding interview and did not provide evidence that it was due to Agency or Postal Service error. Therefore, the employer cannot be relieved of charges. Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

**DECISION:**

The July 12, 2018, (reference 01) decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as 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 has been overpaid benefits in the amount \$622.00 but is not required to repay the benefits because the employer did not participate in the fact-finding interview. The employer's account is not relieved of charges.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/scn