

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES A DEAVERS

Claimant

APPEAL 22A-UI-05257-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST MECHANICAL INDUSTRIAL

Employer

OC: 01/23/22

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer, Midwest Mechanical Industrial, filed an appeal from the February 14, 2022, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion he quit because his working conditions were detrimental to him. The parties were properly notified of the hearing. A telephone hearing was held on April 7, 2022. The claimant participated and testified. The employer participated through Director Lauren Roden and Project Manager Shannon Guy. Exhibits 1, 2, and 3 were received into the record. Official notice was taken of the agency records.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant has been overpaid benefits? Whether the claimant is excused from repaying benefits due to the employer's non-participation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Charles Deavers, worked as a full-time electrician for the employer from March 26, 2019, through September 10, 2021, until his employment ended, when he quit. The claimant's immediate supervisor was Supervisor Link Luff.

In late 2019, Mr. Luff arrived at work. Mr. Luff began the day by stating that the claimant was only allowed to take 30 minute breaks. The claimant replied, "I'm not doing anything differently than anyone else." Mr. Luff replied, "It is bullshit. I am going to write you up about it. Don't fucking do it again."

On August 18, 2020, Mr. Luff and Mr. Guy issued the claimant a suspension. The employer provided a copy of the suspension issued to the claimant. The suspension notice states the claimant must "follow work schedule and complete required / assigned tasks." (Exhibit 3)

On August 24, 2020, the claimant was teaching one of the mechanics to calibrate a knife on a machine. Mr. Luff called the claimant up. After the claimant picked up the phone, Mr. Luff asked, "What the fuck are you doing? Why are you not over checking the knife advance?" The claimant explained that he taught the mechanic how to do the work earlier that morning. Mr. Luff replied, "No you are going to do it. Get your ass over here." Later that day, the claimant told Mr. Guy and Mr. Luff that Mr. Luff could not talk to him like that.

In the fall of 2020, Mr. Luff stopped in front of the claimant when he was about to depart to take his break. Mr. Luff asked, "Where the fuck have you been? I know when you went out. I know when you went in. You don't take more than a 30-minute break." The claimant asked when he left for break and returned from break. Mr. Luff merely folded his arms and placed a piece of paper in his shirt.

On March 24, 2021, Mr. Luff gave the claimant his performance evaluation. The employer provided a copy of the claimant's annual performance evaluation. (Exhibit 2) The claimant's performance evaluation gave him no points for a field labeled, "Supervisor is given proper notice in advance of absences." The employer provided absenteeism documentation from February 6, 2020 through July 5, 2021, showing this pattern regarding the claimant's absences. (Exhibit 1) The claimant received .5 points in fields marked, "No abuse of meal periods, coffee breaks, quitting time, or other special absences," and, "No unnecessary delays in starting work at a specified time." Mr. Luff left a comment on the end of the performance evaluation, "Lunch and break times need to follow [employer] guidelines. 1/2 hour lunch is not [one hour] and 15 [minute] breaks are not 30 [minutes]." (Exhibit 2)

On September 10, 2021, the claimant and a coworker had just finished an assignment. The claimant approached a bin to place leftover metal from the assignment. As the claimant rolled down his window, Mr. Luff approached his vehicle waving his arms because he was angry. The claimant put his vehicle in park. Then Mr. Luff yelled, "Where the fuck have you been? What the fuck?" The claimant told Mr. Luff, "You don't have to talk to me about this or treat me like this. You are an asshole and I quit." Mr. Luff said, "Let's talk about this." The claimant replied, "Link just stay away from me." The claimant went to his trailer to get his keys. Mr. Luff said, "Wait let's talk about this." The claimant replied, "Please get the fuck away from me. Get the fuck away from me." The claimant then his coworkers that he would miss them.

On September 11, 2021, the claimant told Mr. Guy about the incident that occurred the previous day. Mr. Guy acknowledged that it was not appropriate for a supervisor to use curse words during a conversation with a subordinate. Mr. Guy promised the claimant he would talk to Mr. Luff and encouraged him to report to work on September 13, 2021. The claimant and Mr. Guy had a similar conversation on September 12, 2021.

On September 13, 2021, Mr. Luff arrived at work, through papers down on the bench and exclaimed, "You got one over on the company." He handed the claimant and his peers their assignments. Then Mr. Luff asked, "Is that it?" Mr. Luff then walked out. The claimant spoke with Mr. Guy about this interaction. Mr. Guy replied, "Link is who he is. I talked to him about this weekend. I can't do much more than that." In response, the claimant quit effective immediately.

The following section describes the findings necessary to resolve the overpayment issue:

The claimant filed for and received his full weekly benefit amount of \$601.00 for the weeks ending January 29, 2022, February 5, 2022, February 12, 2022 and February 19, 2022, for a total of \$2,404.00.

Mr. Guy was on the phone for the factfinding interview occurring on February 11, 2022 at 8:20 a.m.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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:

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), (22), (28), (33) 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 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.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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).

The claimant acknowledges he told Mr. Guy that he was resigning effective immediately on September 13, 2021. As a result, it is clear the claimant had the intent to separate the employment relationship and carried out that intention.

The 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). 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).

The claimant recounted four times Mr. Luff used curse words in conversations he had with him over a nearly three-year period. While the administrative law judge agrees that Mr. Luff should not have used curse words, let alone the word "fuck," he does not find these four conversations intolerable to transform the claimant's working environment into one that was objectively intolerable. That is especially the case considering that the record establishes this was an ongoing concern Mr. Luff had attempted to address with the claimant through proper channels such as through his performance evaluation.

While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. The claimant's reasons fall more clearly within causes not attributable to the employer. See Iowa Admin. Code r. 871-24.25 (21), (22), (28), (33). Benefits are denied.

The next issue is whether claimant has been overpaid benefits. 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 unrebutted 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.

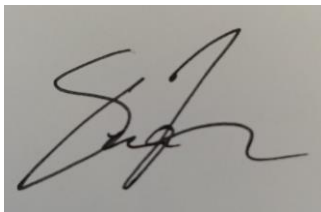
Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in 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 benefits were not received due to any fraud or willful misrepresentation by claimant. However, the employer did participate in the fact-finding interview. Thus, the claimant is obligated to repay to the agency the benefits he received.

The law also states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. . ." Iowa Code § 96.3(7)(b)(1)(a). Here, the employer was represented by Mr. Guy at factfinding. Mr. Guy provided firsthand testimony regarding the circumstances of the claimant's separation. This constitutes adequate participation on the part of the employer. The employer's account shall not be charged (# 368470).

DECISION:

The February 14, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his employment 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.

The claimant has been overpaid unemployment insurance benefits in the amount of \$2,404.00 and is obligated to repay the agency those benefits because the employer adequately participated during the factfinding interview. Rather, the overpayment should be charged to the fund.

A handwritten signature in black ink, appearing to read 'S. Nelson', is shown within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515) 725-9067

April 26, 2022
Decision Dated and Mailed

smn/mh