

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUDY M LAMPE**  
Claimant

**BASIS LIVE LLC**  
Employer

**APPEAL 17A-UI-06089-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/17  
Claimant: Respondent (1)**

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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 June 6, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 7, 2017. The claimant participated and testified. The employer participated through Chief Business Officer Andrew Thompson. Claimant's Exhibits A through C and employer's Exhibit 1 were received into evidence.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to 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: Claimant was employed full time as a sponsorship manager from July 1, 2016, until this employment ended on May 16, 2017, when she voluntarily quit.

The employer in the case distributes payroll to employees by the first and 15th day of each month. The pay period for checks distributed on the 15th of the month runs from the first day of the month to the date of pay. The pay period for the checks distributed on the first on the month runs from the 16th to the end of the previous month. On May 15, 2017, claimant did not receive a pay check. (Exhibits 1 and C). Claimant had become concerned with the employer's solvency based on prior communications with DeWaard and communications she had received from vendors. (Exhibit B). The following day, May 16, claimant tried calling her immediate supervisor, owner Dave DeWaard, to see what was going on, but did not get an answer. After claimant's missed pay check and when she could not reach DeWaard, she stopped completing work for the employer, as she did not wish to continue working without payment.

Thompson testified claimant did not receive a pay check on May 15, because the employer believed she had resigned effective May 2, 2017. He was not able to explain why she was not paid for work completed on May 1. According to Thompson claimant phoned DeWaard early in the morning on May 2 to tell him things were not working out and she was resigning effective immediately, but would be available to answer questions during a transition period. DeWaard was not made available to testify about this conversation.

Claimant testified she never had such a conversation with DeWaard. According to claimant she and DeWaard spoke on May 2, but their conversation was about various ways of collecting and generating revenue. Claimant also testified she indicated to DeWaard on May 3 or 4 that she was not comfortable continuing to solicit money from customers for future events until she had some questions answered about the company's solvency going forward, but denies she ever said anything about resigning during these conversations. In support of her position claimant submitted various emails sent on May 11, 15, and 16 about work related issues. (Exhibit A). The emails are between claimant and other employees and claimant and vendors/customers. The emails also include communication initiated to a customer by another employee, which claimant is copied on. Thompson testified the emails to and from claimant were part of the transition process and the email to the customer had claimant copied as a courtesy.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 14, 2017. The claimant filed for and received a total of \$3,248.00 in unemployment insurance benefits for the weeks between May 14 and July 1, 2017. The employer did not participate in a fact finding interview regarding the separation on June 5, 2017. The fact finder determined claimant qualified for benefits.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

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 notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to

rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Here, there is a dispute between the parties as to when the claimant resigned and the reason for her resignation. Thompson testified claimant resigned on May 2, 2017 because things were not working out. Claimant testified she did not resign until May 16, 2017, because she was not paid wages for the pay period ending May 15. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. The employer's witness relied entirely on second-hand information he received from DeWaard, who was not made available to testify during the hearing. The claimant, on the other hand, relied on her own first-hand testimony. The exhibits submitted by the parties, most significantly the emails in Exhibit A, also are consistent with claimant's version of events.

Claimant resigned because she was not paid as scheduled on May 15, 2017. In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942). Because claimant resigned with good cause attributable to the employer, benefits are allowed. As benefits are allowed, the issues of overpayment and participation are moot.

**DECISION:**

The June 6, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs