

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THU T LE
Claimant

APPEAL NO: 17A-UI-08689-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-A IOWA DENTAL PLLC
Employer

OC: 12/04/16
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 14, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 12, 2017. The claimant participated in the hearing. Sonal Patel, Owner and Vishal Patel, Regional Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dental assistant for A-1 Iowa Dental from March 10, 2015 to July 5, 2016. She voluntarily left her employment after her maternity leave was over.

The employer allows eight weeks for maternity leave and the claimant began her leave April 22, 2016. On July 5, 2016, the employer sent the claimant a text message stating she had exhausted her maternity leave and asking when she was returning to work. The claimant stated she was not “100 percent sure” when she was coming back. The employer asked the claimant if he should hire someone else and the claimant told him to do so. The employer told the claimant she could reapply when she was ready to return to work. On October 3, 2016, the claimant texted the employer and asked if it was hiring and the employer said not at that time but it would let her know when it had an opening. On November 3, 2016, the employer asked the claimant if she was available to work Saturday, November 5, 2016, and the claimant said yes but she had just started another job. On November 17, 2016, the employer asked the claimant if she could work November 18 and 19, 2016, and the claimant said she could work Saturday, November 19, 2016. The employer then asked the claimant if she could work Wednesday, November 23, 2016, but the claimant did not reply. On December 19, 2016, the

employer texted the claimant and asked if she wanted to return to work full-time and the claimant did not respond.

The claimant has claimed and received unemployment insurance benefits in the amount of \$9,812.00 for the 22 weeks ending May 6, 2017.

The employer participated personally in the fact-finding interview through the statements of Regional Manager Vishal Patel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant went on maternity leave and stated the employer told her to take as long as she wanted and to come back when she wished and she would receive the same hours and wages upon her return. However, the employer only allows for eight weeks of maternity leave and it is not reasonable to believe it would allow her to take an unlimited and unspecified amount of time off. The fact that the employer texted the claimant July 5, 2016, approximately nine weeks after she started her maternity leave, to ask when she was returning to work indicates its maternity leave was not unlimited. When the employer asked the claimant when she was coming back the claimant stated she did not know. The employer asked the claimant if he should hire someone else and the claimant said yes. The claimant was not ready to return upon the completion of her maternity leave. The employer is not required to hold her job indefinitely. Under these circumstances, the administrative law judge must conclude the claimant voluntarily left her employment without good cause attributable to the employer.

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.

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 claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Regional Manager Vishal Patel. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$9,812.00 for the 22 weeks ending May 6, 2017.

DECISION:

The August 14, 2017, reference 02, decision is reversed. The claimant voluntarily left her 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 received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$9,812.00 for the 22 weeks ending May 6, 2017.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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