

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARL R EATON
Claimant

T & L PROPERTIES LLC
Employer

APPEAL 19A-UI-08174-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/04/18
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:

Employer/appellant filed an appeal from the October 17, 2019 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 7, 2019, at 11:00 a.m. Claimant participated. Employer participated through Ted Oswald, Managing Member. Witnesses for employer included Carrie Woerdeman, Vice President of Operations, and Mike Tomich, Maintenance Manager. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged due to its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time building manager and maintenance technician from November 27, 2018 until his employment with T & L Properties, LLC ended on September 30, 2019. (Claimant Testimony) Claimant worked Monday through Friday from 8:00 a.m. until 4:30 p.m. and was on call for any maintenance emergencies. (Claimant Testimony) Claimant's direct supervisor was Mike Tomich, Maintenance Manager. (Claimant Testimony)

Claimant became stressed about his workload. (Claimant Testimony) Claimant believed the increased stress negatively affected his health by increasing his blood pressure and causing problems with his sight and hearing. (Claimant Testimony) Claimant did not see a physician about these concerns. (Claimant Testimony) Claimant addressed his concerns with employer in July 2019. (Claimant Testimony) At that time, employer offered to remove some of claimant's workload. (Claimant Testimony) Employer began the process of reassigning some of claimant's work. (Woerdeman Testimony) Claimant did not tell employer that he would quit if immediate changes were not made. (Woerdeman Testimony; Tomich Testimony)

On September 3, 2019, the Vice President of Operations sent claimant an email with a list of items that needed to be completed. (Claimant Testimony) The email did not contain a reprimand or threats of disciplinary action if the terms were not completed (Claimant Testimony) However, the email added to claimant's stress. (Claimant Testimony) On September 30, 2019, claimant notified employer via email that he was quitting effective immediately. (Claimant Testimony) Claimant alleged he was quitting due to intolerable working conditions. (Claimant Testimony) When asked about the working conditions that led to his resignation, claimant pointed to the September 3, 2019 email as an example. (Claimant Testimony) Claimant provided no other examples of intolerable working conditions.

There was continuing work available to claimant if he had not resigned. (Woerdeman Testimony) Claimant's job was not in jeopardy. (Woerdeman Testimony) The administrative record reflects that claimant filed for and has received unemployment insurance benefits in the gross amount of \$1,036.00 for the benefit weeks ending October 5, 2019 through November 2, 2019. Employer did not participate in the fact-finding interview. (Oswald Testimony)

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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). Where a claim gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.26(4) and (6) provide:

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.

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licenses and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under the paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant voluntarily quit his employment as evidenced by his written resignation. Claimant alleges he quit due to intolerable or detrimental work conditions and health concerns. The administrative law judge has considered claimant's stated reasons for quitting and finds that none of them constitute good cause attributable to the employer. Claimant provided no evidence of working in intolerable or detrimental work conditions. Claimant resigned because he felt overwhelmed and stressed, which are claimant's feelings – not work conditions. The only example claimant provided of intolerable or detrimental work conditions was an email he received from a superior outlining work that needed to be done. The email was not hostile or threatening. Claimant was not rebuked for not getting his work done. In fact, when claimant expressed his concern with employer, employer identified ways to decrease claimant's workload. Claimant also points to his stress at work as the cause of his high blood pressure and vision and hearing problems. Claimant did not consult or receive advice from a physician prior to resigning; claimant did not tell employer that he would quit if his workload and stress levels were not reduced. Claimant has not met his burden of proving he quit for good cause attributable to employer. Benefits are denied.

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. For the reasons that follow, the administrative law judge concludes the claimant was overpaid benefits; however, because employer did not participate in the fact-finding interview, claimant is not required to repay those benefits and employer's account shall be charged.

Iowa Code § 96.3(7)(a)-(b) 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.

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 employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

In this case, claimant has received benefits to which he was not entitled. However, the employer did not participate in the fact-finding interview. Therefore, claimant is not obligated to repay to the agency the benefits that he received and the employer's account shall be charged.

DECISION:

The October 17, 2019 (reference 03) unemployment insurance decision is reversed. Claimant voluntarily quit work without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,036.00 and is not obligated to repay the agency those benefits. Employer did not participate in the fact-finding interview and its account shall be charged.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn