

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEAH J TEEMS

Claimant

APPEAL 19A-UI-06827-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWWL TELEVISION INC

Employer

OC: 07/28/19

Claimant: Respondent (1-R)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Admin. Code r. 871-24.25(38) – Discharge After Resignation

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:

On August 27, 2019, KWWL Television, Inc. (employer) filed an appeal from the August 19, 2019, reference 01, unemployment insurance decision that allowed benefits from July 28 through August 31, 2019 based upon determination Leah J. Teems (claimant) voluntarily quit employment effective August 31, 2019 and the employer discharged her before that time as a result. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2019. The claimant did not respond to the hearing notice and did not participate. The employer participated through Station and General Sales Manager John Huff. Sandy Youngblut was sworn in as a witness but did not testify. No exhibits were admitted into the record.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can 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 Sales Account Executive beginning on August 28, 2017, and her last day worked was July 31, 2019.

On July 29, the claimant notified Station and General Sales Manager John Huff verbally and via email that she was resigning to move to another location but did not know when her last day would be. On July 31, the claimant told Huff that she thought her last day would be August 31. Huff made the decision to discharge the claimant because the employer does not usually keep employees who earn commission on staff after they submit their notice of resignation.

The administrative record reflects that the claimant has filed for unemployment insurance benefits for the two-week period ending August 31, 2019 but has not received any unemployment benefits since filing her claim for benefits as her claim is locked due to a voluntary quit, presumably based on her separation from this employer. This does not appear to be consistent with the unemployment insurance decisions issued by the agency. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date. Benefits are allowed through August 31, 2019, provided she is otherwise eligible. Benefits are denied effective September 1, 2019.

Iowa Code section 96.5 provides, in relevant part:

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.

...

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good

faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

...

(2) The claimant moved to a different locality.

....

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation

The claimant's decision to quit to move to a new locality is not a good cause reason attributable to the employer. However, as the discharge was in response to a resignation notice, no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation, in this case August 31, 2019.

As benefits are allowed through the week ending August 31, 2019 and the claimant has not claimed benefits after that date, the issue of overpayment is moot and the charges to the employer's account cannot be waived.

The claimant has claimed benefits for the two-week period ending August 31, 2019; however, she has not received those benefits as her claim is locked. The lock on the claimant's claim is remanded to the Benefits Bureau of Iowa Workforce Development (IWD) for review to ensure it has been applied consistent with all agency decisions.

DECISION:

The August 19, 2019, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until August 31, 2019. Thereafter, benefits are withheld until such time as the claimant works in and has been

paid wages equal to ten times her weekly benefit amount. As benefits are allowed through the week ending August 31, 2019 and the claimant has not claimed benefits after that date, the issue of overpayment is moot and the charges to the employer's account cannot be waived.

REMAND:

The claimant has claimed benefits for the two-week period ending August 31, 2019; however, she has not received those benefits as her claim is locked. The lock on the claimant's claim is remanded to the Benefits Bureau of IWD for review to ensure it has been applied consistent with all agency decisions.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs