

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSI L CURL
Claimant

BILLS' BROS FREIGHT SALVAGE INC
Employer

APPEAL NO: 20R-UI-11462-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (4)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 8, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 10, 2020. The claimant participated in the hearing. Sandy Bills, Office Manager and Mike Bills, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his 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 general manager for Bills' Brothers Freight Salvage from December 15, 2002 to May 16, 2020. He voluntarily left his employment after becoming frustrated about the business being short-staffed.

On May 16, 2020, another employee asked the claimant to assist him with changing the drains on the eaves and the claimant used a fork truck to lift him up to the roof. Owner Mike Bills came out and yelled at the other employee to get off the fork truck and the claimant lowered him. Approximately two hours later the claimant approached Mr. Bills and said, "Fuck you" and then said, "I'm outta this fucking place. I'm going somewhere I can work with real men." He told Office Manager Sandy Bills he was not "wearing your fucking masks" and walked off the job. He made all of those comments in front of customers and very loudly. The employer determined the claimant voluntarily quit his job.

On May 18, 2020, the claimant showed up out of uniform and still appeared angry and aggressive to Mr. Bills. The employer asked him for the passcode to the I-Pad it supplied him

ONLINE RESOURCES:

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>
National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>
Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>
Facts About Unemployment Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>
Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>
<http://www.iowaworkforce.org/ui/uiemployers.htm>

and the claimant asked if Mr. Bills wanted him to give a two-week notice. Mr. Bills declined the claimant's offer.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,000.00 for the four weeks ending June 20, 2020.

The employer was not called for the fact-finding hearing. It called the Department after receiving the representative's decision and was told the Benefits Bureau was overwhelmed and the employer would have to file an appeal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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. 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 "l," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(33) 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.

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 was upset and frustrated because the employer was short-handed and he felt he was doing the work of four employees. He took his anger out on Mr. Bills and Ms. Bills by saying "Fuck you" and "I'm going somewhere I can work with real men," to Mr. Bills before telling Ms. Bills he was not "wearing your fucking mask." He then stated, "I'm outta this fucking place" and walked off the job. The claimant's words were inappropriate and disrespectful toward the employer. The employer reasonably believed the claimant's words and actions demonstrated that he was voluntarily quitting his job. That conclusion is bolstered by the fact the claimant went to the employer's premises May 18, 2020, without wearing his uniform and offered to provide the employer with a two-week notice. It is not logical that the claimant would say he would give a two-week notice if he had not voluntarily quit his job. The claimant

voluntarily quit his job because he was dissatisfied with the work environment. He has not shown that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Because the claimant offered to provide the employer with a two-week notice and the employer declined that offer, the claimant is eligible for benefits for the first two weeks he claimed benefits and denied benefits after that time. Therefore, benefits are allowed for the two weeks ending June 6, 2020, and denied beginning the week ending June 13, 2020.

The next issue in this case is whether the claimant/appellant was overpaid unemployment insurance benefits.

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.

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 was not called for the fact-finding interview, the claimant is not required to repay the overpayment and the employer's account will not be charged for benefits paid. The claimant's benefits shall be charged to the state unemployment trust fund.

DECISION:

The July 8, 2020, reference 01, decision is modified in favor of the employer. 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 benefits in the amount of \$2,000.00 but is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview due to no fault of its own and its account shall not be charged. Instead, the overpayment shall be charged to the fund.



Julie Elder
Administrative Law Judge

November 19, 2020
Decision Dated and Mailed

je/mh