

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD C FRANCIS
Claimant

DEPT OF AGRICULTURE
Employer

APPEAL 24R-UI-07533-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/26/24
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Department of Agriculture, filed an appeal from a decision of a representative dated June 24, 2024, (reference 01) that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, Administrative Law Judge Duane Golden held a telephone hearing on July 22, 2024, in Appeal 24A-UI-06252-DG-T. The claimant, Richard Francis, did not appear and did not participate. The employer participated through Human Resources Assistant Rachel Moreno and Supervisor Daniel Salsman. Judge Golden issued an Administrative Law Judge Decision in Appeal 24A-UI-06252-DG-T on July 26, 2024, reversing the reference 01 decision and holding the claimant ineligible for unemployment insurance benefits. The claimant appealed the Administrative Law Judge Decision in Appeal 24A-UI-06252-DG-T to the Iowa Employment Appeal Board (EAB).

The EAB issued an EAB Decision in Appeal 24B-UI-06252 on August 22, 2024. The EAB concluded that the claimant did not participate in the July 22, 2024, hearing due to circumstances beyond the claimant's control. The EAB remanded the case to an administrative law judge to conduct a new hearing.

After due notice, the undersigned administrative law judge held a telephone hearing on September 11, 2024, in Appeal 24R-UI-07533-PT-T. The claimant participated personally. The employer participated through Labor and Employee Relations Specialist Angie Acklin, Employee Relations Assistant Rachel Moreno, and Supervisor Daniel Salsman. The employer's Exhibits 1 through 3 were admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the claimant quit for good cause attributable to the employer.
Whether claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived.
Whether any charges to the employer's account can be waived.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was rehired as a full-time food safety inspector with the United States Department of Agriculture (USDA) on August 13, 2023. His employment ended on May 29, 2024. As a food safety inspector, the claimant was stationed at the Tyson Fresh Meats processing facility in Storm Lake, Iowa, where he was responsible for inspecting machines and animal parts for contamination. The claimant typically worked Monday through Friday from 6:30 a.m. to 4:00 p.m., but was sometimes assigned to work night shifts.

On November 30, 2024, while inspecting a slaughter line, the claimant noticed one of the hog carcasses had fecal matter that was touching a food contact surface area. The claimant ordered the line be shut down and directed two Tyson employees to clean the carcass and the food contact surface area. As he was directing the employees, a Tyson supervisor approached the claimant and shouted several times to restart the line. The claimant tried to explain the situation, but the Tyson supervisor continued pointing and shouting, "you cannot stop the line!" After the incident, the claimant completed and submitted a harassment report with the USDA Food Safety and Inspection Service.

Although USDA food safety inspectors are stationed at various meat processing and packaging facilities to perform their regulatory duties, the USDA does not have supervisory or disciplinary authority over Tyson employees. For this reason, when complaints are filed against Tyson employees, the USDA's standard practice is to meet with the superintendent of the facility, inform them of the complaint, and ask the superintendent to address the situation. In this case, after the claimant filed his complaint, the claimant's supervisor met with the superintendent of the Storm Lake facility, discussed the problem, and the superintendent agreed to address the problem with the supervisor who had shouted at the claimant. Additionally, the claimant's supervisor moved the claimant to a different shift for 14-days for his personal safety. After 14 days, the claimant's supervisor closed out the case.

On January 11, 2024, the claimant heard from another employee that the Tyson superintendent had complained to the claimant's supervisor that the claimant had been shutting down the production lines unnecessarily. Later that day, the claimant confronted the superintendent, told her he had concerns about her comments, then proceeded to explain when and why he shuts down lines. The superintendent did not appreciate the unexpected explanation, so she instructed the claimant to talk to his supervisor about the issue and walked away. A few days later, the Tyson superintendent filed a complaint for "unprofessionalism" with USDA over the interaction. After taking the claimant's statement about the incident, on January 22, 2024, the claimant's supervisor issued the claimant an instructional letter reminding the claimant to be professional in the workplace and to follow appropriate procedures.

On January 24, 2024, the claimant filed a workplace violence complaint against the Tyson superintendent over their interaction on January 11, 2024. After the claimant submitted his complaint, USDA temporarily transferred the claimant to a facility in Minnesota for two days to give the claimant a chance to calm down.

On March 28, 2024, the claimant filed a complaint against his supervisor for allegedly being dismissive and disregarding of the claimant's concerns. On April 19, 2024, while inspecting hogs on a production line, the claimant ordered the line be shut down to remove several carcasses. After shutting down the line, a Tyson supervisor approached the claimant shouting at him to restart the line. A similar situation happened again on April 26, 2024, wherein a Tyson supervisor yelled at the claimant after the claimant shut down a line. After each incident, the

claimant filed workplace violence complaints against the supervisors. After waiting a few days to hear back about his complaints, the claimant filed a complaint against the USDA district office for failing to take appropriate action on his complaints.

Unbeknownst to the claimant at the time, after the claimant filed each of his complaints, the claimant's supervisor elevated the complaints up the USDA chain of command until the complaints reached, and were reviewed by, the USDA district office. Because the claimant had filed workplace violence complaints against Tyson supervisors on both the day and night shifts, the district office determined that it would be best to temporarily reassign the claimant to a different facility for his personal safety while the district office investigated the complaints.

After a staff meeting on May 7, 2024, the claimant's supervisor took the claimant aside and told the claimant that he needed to be on a phone call with district office personnel. The claimant's supervisor sent the claimant to a private office to take the call. During the call, the district office informed the claimant that it was temporarily transferring him to the Tyson facility in Marshalltown, Iowa for his personal safety while the district investigated his complaints. At the end of the call, the district office instructed the claimant to pick up a copy of his travel orders from his supervisor.

The claimant was upset with the district office's decision to send him to Marshalltown. For this reason, after the call, the claimant left the office and quickly started walking towards the exit of the facility. As the claimant was walking towards the exit, the claimant's supervisor called out the claimant's name so that he could give the claimant his travel orders. The claimant stopped, turned to his supervisor, and responded, "Nope, I'm not doing this. I'm leaving." The claimant then left the facility and sat in his car for approximately one hour. The claimant then returned to the facility, told his supervisor that he was not feeling well and was going to take sick leave, and went home.

The claimant was on paid detail in Marshalltown for approximately two-weeks. After the district office completed its investigation, the claimant returned to the Storm Lake facility. On May 20, 2024, while filling out his timesheet, the claimant submitted a request to use sick leave to cover his time off work on May 7, 2024. The claimant's supervisor denied the claimant's sick leave request, noting that the claimant could use sick leave for most of the time, but that he needed to use "Absent Without Leave" (AWOL) for the one hour he was outside the facility sitting in his car. The claimant objected to categorizing the time in his car as AWOL and he submitted a second timesheet requesting sick leave be used to cover his entire absence.

On May 27, 2024, pursuant to USDA's collective bargaining agreement, the employer submitted a request for disciplinary action against the claimant for failing to follow his supervisor's instructions in filling out his timesheet. On May 28, 2024, the claimant sent the employer an email resigning his position effective immediately. In the email, the claimant listed a number of reasons as to why he was quitting, alleging the district office failed to respond to his complaints, that his supervisor had retaliated against him, and that the work environment was toxic and hostile. The employer accepted the claimant's resignation. While the employer had requested disciplinary action against the claimant, it had taken no steps towards terminating the claimant's employment and there was continuing work available for the claimant had he not resigned.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$732.00 in regular state funded unemployment benefits and \$3,024.00 in FE benefits, since filing a claim with an effective date of May 26, 2024, for the six weeks ending July 20, 2024. The administrative record also establishes that the employer did participate in the fact-finding interview with Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the claimant's written resignation to the employer is both evidence of his intention to sever the employment relationship and is an overt act carrying out his intention. The record shows that the claimant, not the employer, ended the employment relationship. As such, I find the claimant quit his employment.

The 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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). If the claimant fails to meet their burden, the separation from employment is disqualifying.

Where a claimant 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 whether 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. 871-24.25(6), (21), (22), and (28) provide:

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...***

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

(Emphasis added.)

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.

(Emphasis added.)

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony concerning his interactions with the Tyson employees on November 30, 2023, April 19, 2024, and April 26, 2024, to be generally credible. However, the administrative law judge gave greater weight to the employer's testimony concerning its investigations into the claimant's complaints, the events of May 7, 2024, as well as the grounds for its May 27, 2024, request for disciplinary action, as the employer's testimony was clear, detailed, and more consistent with other believable evidence. Taken together, it is conceivable that the Tyson supervisors' shouting and unprofessional conduct had a serious impact on the claimant.

The issue here, however, is not whether the claimant's feelings were impacted by the Tyson employees' behavior. Rather, the critical inquiry is whether the claimant's decision to end his employment was with good cause attributable to the employer. In order for the claimant to demonstrate that he quit with good cause attributable to the employer, he must demonstrate that he quit because the work environment was intolerable, detrimental, unlawful, or unsafe. The claimant has not demonstrated as much. While the Tyson employees' behavior was unprofessional and inappropriate, it did not rise to the level of abusive, discriminatory, berating, or cruel treatment that required the claimant to quit. Moreover, after reporting the incidents, the employer promptly transferred the claimant to a new facility, investigated, and addressed the conduct with the Tyson superintendent. The claimant's supervisor properly responded to and addressed the claimant's complaints and the claimant chose to continue working for the employer for more than a month after his last confrontation with a Tyson employee.

The claimant submitted his resignation one day after the employer requested disciplinary action be taken against the claimant for failing to follow his supervisor's instructions. While the

employer sought to discipline the claimant, it never told the claimant that his employment was being terminated, it had taken no steps towards terminating his employment, and continuing work was available to the claimant. Taken together, working with coworkers and a supervisor you do not like and receiving corrective action are standard parts of the American work experience. Neither of these, alone or in combination, amount to a good-cause reason to quit. As such, benefits must be denied.

The next issues to be determined are whether the claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged.

Iowa Code section 96.3(7) provides, in relevant part:

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.

Iowa Admin. Code r. 871-24.10 provides, in relevant part:

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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those 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). In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The June 24, 2024 (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left his employment on May 28, 2024, without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

The claimant has been overpaid regular unemployment insurance benefits in the amount of \$732.00, and FE benefits in amount of \$3,024.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.



Patrick B. Thomas
Administrative Law Judge

September 27, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.