

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS L JONES
Claimant

APPEAL 18A-UI-04777-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 04/01/18
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:

The employer filed an appeal from the April 18, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 14, 2018. The claimant participated and testified. The employer participated through Director of Human Resources Theresa McLaughlin, Assistant Meat Market Manager Bryan Bartsch, and Market Manager Mike Hanna. Employer's Exhibits 1 and 2 were received into evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any 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: Claimant was employed part time as a market employee in the meat department from July 17, 2017, until this employment ended on March 24, 2018, when he voluntarily quit.

On March 24, 2018, claimant approached Bartsch to ask how long he would be at work. Bartsch told claimant he would be there until 5:00. Claimant then informed Bartsch it was going to be his last day working for the employer. Approximately one and a half hours later Bartsch called claimant into the office to discuss his reasons for resigning.

Claimant testified he was resigning due to a hostile work environment. According to claimant, the day prior, he had noticed an employee, Josh, using a rag from the chicken sanitizer bucket to wipe down the meat cutting area. Claimant testified he pointed out to Josh that what he was doing violated food safety protocol and Josh yelled at him to get him "an f---ing rag." This was not the first time claimant and Josh had a run in. In October 2017, claimant moved something

Josh was working on aside and Josh told him that if he touched that thing again he would knock him out. In addition to his issues with Josh, claimant was also having problems with a full-time employee, Joe. According to claimant, Joe was narcissistic, rude to customers, and refused to help out when asked. Claimant testified he had spoken to Hanna about Joe on several occasions, both in January and February 2018, but nothing changed. Claimant also noted, after each time he spoke with Hanna, his hours would go down the following week. Claimant testified both Joe and Josh were being allowed to violate policies outlined in the employee handbook without consequence and, following the March 23 incident, he could not work in that environment any longer.

Hanna acknowledged speaking to claimant on several occasions about his dissatisfaction with the work environment. According to Hanna claimant was often very vague with his complaints, including refusing to name specific individuals, making it very hard for Hanna to address his concerns with other employees. Hanna also noted several employees in the department had issues with claimant's performance, leading to ongoing frustration among the crew. Hanna testified when claimant's hours were reduced, they were reduced either at his request, or because the flow of business was low. Hanna further explained hour cuts when business is low are based on merit. Bartsch, who was present for the October incident, testified that when the incident occurred it was addressed immediately and resolved amicably between claimant and Josh. Bartsch further testified, when claimant spoke to him about resigning on March 24, that he was very vague in his reasons for resigning, stating he was done with "them" disrespecting him. According to Bartsch claimant declined to give any specific information such as a particular incident or individuals to whom he was referring. Bartsch further testified he was working with claimant the previous day and did not hear anyone use any profanity towards him or otherwise speak to him in an inappropriate manner.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 1, 2018. The claimant filed for and received a total of \$540.00 in unemployment insurance benefits for the weeks between April 1 and May 5, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on April 17, 2018. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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.

Iowa Admin. Code r. 871-24.25 provides:

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.

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). 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).

Here, the claimant resigned due to ongoing issues with his coworkers. Claimant testified one coworker, Joe, had several issues with his attitude and performance that the employer failed to address. Claimant testified another employee, Josh, threatened him approximately six months prior to his resignation. However, the employer credibly testified that situation was resolved. While Josh's language on March 23 was most certainly inappropriate and disrespectful claimant did not allege he was threatening or so severe as to create an intolerable working condition. Additionally, while claimant's hours may have been temporarily reduced following his conversations with Hanna, the employer has provided credible testimony that these reductions were in no way related to claimant's conversations with Hanna. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

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

Iowa Code § 96.3(7) provides, in pertinent part:

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.

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 § 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 § 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 § 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 § 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 § 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 § 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides 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 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 claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The April 18, 2018, (reference 01) unemployment insurance decision is reversed. 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 unemployment insurance benefits in the amount of \$540.00 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs