

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WIFAG I MOHAMMED
Claimant

APPEAL 22A-UI-05326-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

**OC: 01/30/22
Claimant: Respondent (1R)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.4(3) - Eligibility - A&A - Able to, Available for Work
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.5(1)j - Voluntary Quitting - Temporary Employment

STATEMENT OF THE CASE:

The employer/appellant, QPS Employment Group, Inc., filed an appeal from the February 22, 2022, (reference 02) unemployment insurance decision that allowed benefits as the record does not show willful or deliberate misconduct regarding the 02/02/2022 dismissal from work. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for April 8, 2022. The claimant, Wifag Mohammed, failed to call and did not participate. The employer participated through Jessica Segner, party representative and Hannah Shoemaker, assistant branch manager. Judicial notice was taken of the administrative record.

ISSUE:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?
Was the claimant overpaid benefits?
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
Is the Claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Employer is a temporary employment agency. Claimant started with employer on 12/06/21. Her first day of work on her last assignment was 12/28/21. Claimant's assignment ended on 01/30/22. Claimant was presented with a written copy of the reporting policy, requiring a request for a new assignment within three days of the end of the current assignment. Claimant signed off on the documentation on 12/03/21.

When her assignment ended, claimant reported the end of the assignment within three days but did not request a new assignment. What she did was advise employer that she was going to be having surgery, so she would not be seeking any assignments until after her surgery and being ready to return. If she had requested an assignment, there were assignments available.

Records show claimant has received \$2,236.00 in benefits for the five weeks from 02/05/22 through 03/19/22, with her weekly benefit amount being \$450. Employer, through Ms. Segner, participated in the fact-finding telephone interview, sharing the dates as set forth above and how claimant did not request an assignment due to an upcoming surgery. Per the definitions, employer did participate in fact finding. See Iowa Admin. Code r. 871-24.10(1).

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's separation was a layoff, a discharge or a voluntary quit without good cause. The administrative law judge concludes it was a voluntary quit with good cause attributable to the employer for the below reasons.

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.

Iowa Code § 96.5(1)j 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. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) 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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

It was proven that claimant was presented with a written copy of the reporting policy and claimant complied by notifying the employer within three days of the assignment ending. Claimant fulfilled the contract of hire when the job was completed. Claimant timely notified employer of the end of assignment and therefore, the separation is not disqualifying pursuant to Iowa Code § 96.5(1)j. By electing to not request a new assignment, she is considered a voluntary quit with good cause attributable to the employer under Iowa Admin. Code r. 871-24.26(19) above. Therefore, claimant is eligible for benefits, so long as she otherwise meets eligibility requirements, making the remaining issues of overpayment for the reason of separation and whether to charge the employer moot.

The next issue is whether claimant is able and available for work. The administrative law judge concludes this issue needs remanded for the below reasons.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or

temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The employer testified that while claimant timely notified employer of the end of the assignment, they did not request a new assignment, with the reason being they were going to have surgery and would get back in touch when they could work. Employer states claimant reached out to employer March 8, 2022, and was told they needed to reapply, but as of the date of the hearing, they had not. It is possible that claimant was unavailable for work for a period of time due to being hospitalized, an illness and/or doctor saying she cannot work. Since claimant did not participate in the hearing, this matter needs further investigation and a decision with appeal rights rendered.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 96.3(7)a-b, as amended in 2008, 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.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant’s separation was not disqualifying, benefits were paid to which she was entitled to so long as she met all other eligibility requirements. 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. There is no record of fraud or willful misrepresentation. The employer did participate in the fact-finding interview. With no reversal, the issue of charging employer is moot.

The claimant is not obligated to repay to the agency the benefits she received, so long as she met all other eligibility requirements, as able and available is subject of remand.

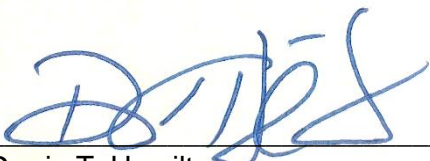
The law also states that an employer is to be charged if “the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits. . .” Iowa Code § 96.3(7)(b)(1)(a). Here, the employer did respond adequately, benefits were paid, but not reversed. While employer participated in fact finding, the issue is moot.

DECISION:

The February 22, 2022, (reference 02) unemployment insurance decision is **AFFIRMED**. Claimant voluntarily quit with good cause attributable to employer. Claimant has not been overpaid unemployment insurance benefits, so long as she met all other eligibility requirements. As such, the issues of repayment due to separation and whether employer’s account is to be charged is moot.

REMAND:

The issue of whether claimant was able to work and available to work are remanded to the Benefits Bureau of Iowa Workforce Development for an investigation, determination, and an unemployment insurance decision with appeal rights.



Darrin T. Hamilton
Administrative Law Judge

April 14, 2022
Decision Dated and Mailed

dh/mh