

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PEDRO GOMEZ

Claimant

APPEAL NO. 14A-UI-12569-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC

Employer

OC: 11/02/14

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

L A Leasing, Inc. filed a timely appeal from a representative's decision dated November 25, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was scheduled for and held on January 26, 2015 at 11:00 a.m. The claimant, Mr. Gomez, provided a telephone number for the hearing but was not available at the telephone number provided and two messages were left. Mr. Gomez did not respond until 11:28 a.m. on January 26, 2015. At that time the hearing had been completed. Mr. Gomez stated that although he was home at the time he was called, he did not participate in the hearing because he was busy taking a shower. The employer participated by Ms. Coleen McGuinty and Ms. Corey Mesta. Claimant has not established good cause for reopening the hearing record. The claimant received the notice of hearing and was at the telephone number provided by the claimant for the hearing, but did not answer the telephone. Because of other hearings scheduled, the employer and the official interpreter, Mr. Ike Rocha, did not have the required time to re-do the hearing after the claimant's late call at 11:28 a.m. Claimant was informed he could appeal the decision regarding reopening of the hearing record to the Employment Appeal Board.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Pedro Gomez began employment with L A Leasing, Inc., a temporary employment service, on October 1, 2013. On November 3, 2014, Mr. Gomez was assigned to work at the Rock Tenn Company, a client of L A Leasing, Inc. Mr. Gomez was assigned to work as a full-time laborer at the client location and was paid by the hour. Mr. Gomez' contact persons with L A Leasing were "Corey" and "Randy," employees of L A Leasing, Inc. assigned to work at the Rock Tenn Company job site.

On November 5, 2014, Mr. Gomez voluntarily quit his assignment at the Rock Tenn Company stating that it was his intention to look for another job that offered more working hours.

At the time of his leaving, Mr. Gomez was assigned to work at the Rock Tenn location in accordance with the agreement of hire and work continued to be available to Mr. Gomez at the time of leaving.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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. 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). Leaving because of dissatisfaction with the wages or hours is not good cause if the employee knew the rate of pay and hours and accepted them when hired. 871 IAC 24.25(13).

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). An individual who leaves work to seek other employment but does not secure the other new employment has left the first employment without good cause attributable to the first employer. See 871 IAC 24.25(3).

The evidence in the record establishes that Mr. Gomez was the moving party in ending the employment relationship between himself and L A Leasing, Inc. Mr. Gomez had accepted a long-term assignment at the Rock Tenn Company but left that employment to seek other employment offering more hours or higher pay. Although the claimant left his employment with L A Leasing, Inc., he did not secure a new employment as expected.

Because Mr. Gomez left his employment with L A Leasing, Inc. without good cause attributable to that employer, claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$1,936.00 since filing a claim with an effective date of November 2, 2014 for the weeks ending November 8, 2014 through January 17, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

Iowa Code § 96.3-7, 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) 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. 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. The employer shall not be charged with the benefits.

(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 disqualifying, benefits were paid to which he was not entitled. 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 if the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based upon a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits are not received due to any fraud or any 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 section 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 the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The representative's decision dated November 25, 2014, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,936.00 and is liable to repay that amount. Because the employer participated in the fact-finding of this matter, the employer's account shall not be charged.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs