

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHEILA L PORREZ
Claimant

C & S PRODUCTS CO INC
Employer

APPEAL NO. 14A-UI-12688-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/19/14
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 4, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 18, 2015. Employer participated by attorney Stuart Cochrane with witnesses Tim O'Toole, Kelly Thiele, Gail Lindy, and Barb Peterson. Claimant did not participate. Employer's Exhibits One through Five were admitted into evidence.

Claimant had previously requested an in-person hearing in this matter. The Unemployment Insurance Decision handed down by the fact finder awarded unemployment benefits to the claimant. Attorney Justin Deppe file an appearance for the claimant. Hearing in this matter was originally set for January 8, 2015. (Delays of up to a few months are not unusual when an in-person hearing is scheduled). Shortly before hearing date Claimant's attorney had requested that this matter be continued. Said request for continuance was timely filed and was granted by the court. This matter was reset for hearing on March 18, 2015 and parties were sent notice on February 20, 2015.

Counsel for claimant requested a continuance of this hearing on March 3, 2015. Claimant's attorney had a previously scheduled Guardianship. The Administrative Law Judge called up the attorney in this matter explaining that the court was not in favor of granting an additional continuance in this matter, and to ask claimant what she chose to do. The court gave attorney Deppe until March 6, 2015 to be back in touch with information.

By March 17, 2015 claimant's attorney had not returned a call to the judge as requested. The Administrative Law Judge gave a call to claimant's attorney as he had not received the response requested. Claimant's attorney stated that he had not been in contact with claimant. Claimant's attorney reiterated that he had a guardianship hearing that he would be attending on March 18, and could not attend the unemployment hearing. The court explained that it would not be granting a second continuance because of scheduling conflicts. The court requested that claimant's attorney contact his client and be in immediate contact with the court. The court gave both a personal cell number and office number to claimant's attorney. No call was forthcoming

but on March 18, claimant sent a letter to the court (court's 1) reiterating that he would not be there. The court called claimant at or around the time of the hearing, and claimant's attorney stated that he would not be at the hearing, and further stated that claimant would not be at hearing as she'd started a job and couldn't get the time off for the hearing. Claimant's attorney did state at that time that claimant would be willing to switch to a telephone hearing.

The court had been in contact with employer's attorney on March 17, 2015. Employer had numerous witnesses who were to be at the in person hearing on March 18. Employer and his witnesses came to the hearing and participated. The court made record of the proceedings to date.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

Whether the appeal is timely?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer made a valid and reasonable attempt to file an appeal by fax in a timely basis.

Claimant last worked for employer on October 14, 2014. Claimant quit her employment on that date because of claimant had felt that she was not kept in the loop on matters concerning the implementation of new inventory and shipping procedures which involved heavy computer usage. Claimant was not developing the knowledge in the new procedures as quickly as desired by employer.

Claimant felt as though she was having difficulty with two coworkers, one of them charged with implementation of new procedures and the other a coworker with whom there was personality conflicts. Claimant approached the manager's office and told him of her quitting on October 14, 2014. Claimant had given no prior indication that she would be ending her employment, and claimant did not go to her manager previous to her quitting to complain about matters.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.32(4) and (8) provide:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 871-24.25(21) and (33) 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:

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

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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 non-participation, 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.

Claimant's attorney filed two requests for continuances in this matter – both being predicated on the fact that claimant's attorney had other matters scheduled. 871 Iowa Admin. Code 26.8(2) limits a party to one postponement of hearing except in cases of extreme emergency. The fact that attorney for claimant is double booked on multiple occasions does not constitute an extreme emergency, and counsel's request for a second continuance was denied. Counsel was not able to be in touch with the claimant and did not return a call to the court as requested two weeks prior to scheduled hearing. Said request for continuance was denied and hearing was held as scheduled.

The initial matter before the court was whether employer's appeal was timely. Employer produced documentation that requests for appeal were faxed to IWD in a timely manner. The court notes that the IWD fax system has had multiple problems within recent months and employer shall not be held responsible for the court's faulty fax machine. The filing in this matter is considered timely.

Claimant's quit was presumably based on a dissatisfaction with her work environment. This dissatisfaction was presumably brought about by both conflicts with coworkers and also difficulties in implementing new procedures. Neither of these reasons for a voluntary quit are seen as for good cause attributable to employer. There was no proof offered that claimant had gone to employer prior to her quitting to complain about work conditions and that nothing had been done.

The overpayment issue is remanded to the finder of fact to determine the amount of overpayment.

The issue of employer participation was addressed. Employer is seen to have substantially participated such that employer's account shall not be charged for benefits paid.

DECISION:

The decision of the representative dated November 4, 2014, reference 01, is reversed and remanded to the fact finder on the issue of amount of overpayment of benefits. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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