

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWNDRREA M CLYCE
Claimant

TMONE LLC
Employer

APPEAL 19A-UI-02422-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/17/19
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
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 March 11, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 4, 2019. Claimant did not participate. Employer participated through Senior Payroll Administrator Ciera Turner. Official notice was taken of the administrative record.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 15, 2018. Claimant last worked as a full-time agent. Claimant was separated from employment on November 19, 2018, when she voluntarily quit.

On October 19, 2018, supervisor Melissa Fowler noticed claimant walking back and forth between her desk and the desk of her girlfriend, who was also employed with this employer. Claimant's primary job duty was to make telephone sales calls, which she could not do while moving back and forth between desks. Fowler gave claimant a reminder that she needed to remain at her workspace unless it was absolutely necessary to get up. Claimant became upset, uttered a profanity, and walked about. Fowler told claimant profanity on the floor was not permitted, but claimant continued to walk out. Recruiter, Tyler Wells, later spoke to claimant and convinced her to return to work on October 23, 2018.

On October 23, 2018 claimant returned to work, following a discussion regarding the October 19 incident. Claimant assured the employer that type of behavior would not happen again. Claimant came to work and performed her job duties without issue for the next few days. However, on October 26, 2018 claimant and her girlfriend got into a disagreement while standing outside the workplace. Claimant indicated she was done, leaving the employer to believe she was quitting again. Claimant did not quit, but returned to work on November 5, 2018. After approximately an hour and a half of work claimant submitted her resignation to Wells for a third time, effective immediately. Ten days later, on November 15, claimant contact Wells, stated she had changed her mind. Wells told claimant it was too late to come back, but claimant spoke to Director of Operations Aric Birchmier, who agreed to let her return to work. Birchmier told claimant to come in at 10:00 a.m. on November 19, 2019. Claimant agreed, but did not come in as directed. When claimant did not arrive at her scheduled work time, the employer assumed she had again resigned. Claimant came in later that day, at 5:00 p.m. indicating she wanted to work. Birchmier told claimant it was too late and the employer had accepted her resignation.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 17, 2019, but she has not received any benefits to date. Both the employer and the claimant participated in a fact finding interview regarding the separation on March 7, 2019. 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive

academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

The employer assumed, when claimant did not show up as directed on November 19, 2018 that she resigned. This assumption was reasonable, given that claimant had previously resigned three times prior. Claimant's failure to show up to work when scheduled on November 19 shows an intent to follow through with her prior notice of resignation. The employer accepted that resignation. 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. As claimant has not received any benefits to date, the issues of overpayment and participation are moot.

DECISION:

The March 11, 2019, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs