

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA P CRAWFORD
Claimant

RISE ABOVE INC
Employer

APPEAL 23A-UI-09436-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/03/23
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated September 29, 2023, (reference 01) that held claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a hearing was held on October 20, 2023. The claimant did not participate. The employer participated through Owner Ray Turner and was represented by Corporate Cost Control Representative Jennifer Rice. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant quit the employment without good cause attributable to the employer or whether she was discharged for job related misconduct.
Whether claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived.
Whether any charges to the employer's account can be waived.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed as a full-time stylist from February 1, 2023, until her employment ended on August 22, 2023. As a stylist, claimant was responsible for cutting clients' hair, cleaning her workstation, and sometimes opening and closing the salon.

In July 2023, claimant called off work several times. Some of claimant's absences were excused and other were not. Regardless of whether or not claimant's absences were excused, each time claimant was absent the salon had to operate short-staffed. On July 22, 2023, claimant was absent from work and she did not call and notify her supervisor of her absence. In early-August 2023, the employer issued claimant a written warning due to her no-call no-show absence. The warning informed claimant that additional attendance violations could result in further discipline up to and including termination of her employment.

On August 17, 2023, claimant had another unexcused absence from work. Claimant was then absent again on August 18 and 19, but she provided a doctor's note for those absences so the employer considered them "excused." The employer was unhappy about the unexcused absence on August 17 and wanted to discuss the absence with claimant the next time she came into work. However, the employer had not taken any steps towards terminating claimant's employment and the employer intended to allow claimant to continue working after they discussed her attendance.

On August 22, 2023, claimant texted the employer stating, "I'm coming in to get my personal items." The employer understood claimant's text to mean that claimant was resigning her employment. The employer accepted claimant's resignation. The next day, claimant came to the salon, gathered her items, and left the employer's premises. There was continuing work available to claimant, but claimant had no further contact with the employer.

The claimant's administrative record indicates that claimant filed her original claim for benefits with an effective date of September 3, 2023. Claimant has filed weekly continued claims for benefits for three weeks between September 3 and September 23, 2023. However, claimant has received no unemployment insurance benefits since filing her original claim. The employer did not participate in the fact-finding interview because the employer did not receive the notice until after the time and date of the scheduled interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, claimant's text to the employer stating that she was coming to get her personal items and then subsequently removing her items from the employer's premises is both evidence of claimant's intention to sever the employment relationship and an overt act carrying out her intention. The employer has established that the claimant, not the employer, ended the employment relationship. As such, I find that the claimant voluntarily quit her employment.

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 Admin. Code r. 871-24.25(28), (35) and (37) 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:

(28) The claimant left after being reprimanded.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

(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.

In this case, the record shows that on August 17, 2023, the employer was concerned about claimant's recent absences and wanted to meet with claimant and discuss her recent attendance. While claimant's attendance may have eventually led to discipline or her termination, claimant's termination was not imminent, the employer never told claimant to quit, and continuing work was available to her.

Moreover, while the claimant had missed several days of work due to illness, claimant has not presented any medical evidence showing an adequate health reason to justify termination, she did not end her employment upon the advice of a licensed physician, nor return to offer her services upon recovery and certification for work by a licensed physician, as is her burden. Based on the evidence presented, while claimant's leaving may have been for good personal reasons, it was not for a good-cause reason attributable to the employer. As such, benefits must be denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The September 29, 2023, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit employment without good cause attributable to the employer. 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. The issues of overpayment, repayment and chargeability are moot.



Patrick B. Thomas
Administrative Law Judge

October 27, 2023
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.