

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRISHA L PHELPS
Claimant

HAWKEYE STATE PROCESS SERVE LLC
Employer

APPEAL NO. 20A-UI-02961-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 0/3/08/20
Claimant: Respondent (2/R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 6, 2020, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was discharged on March 6, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 6, 2020. Claimant Trisha Phelps participated. Attorney Erin Nathan represented the employer and presented testimony through Jared Deahr and Jessica Libbey. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence. The claimant declined to waive formal notice on whether she was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the claimant has been overpaid benefits.
Whether the claimant must repay benefits.
Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Trisha Phelps was employed by Hawkeye State Process Serve, L.L.C., as a full-time data entry clerk from January 2018 until March 6, 2020. Ms. Phelps' primary duties involved filing affidavits of service with the clerk of court, answering the phone, and corresponding with clients. Jessica Libbey, Office Manager, was Ms. Phelps' supervisor. Ms. Libbey reports to Jared Deahr, the business owner. Ms. Phelps work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday.

On March 6, 2020, Ms. Phelps walked off the job at about 9:30 a.m. Immediately before Ms. Phelps left, Ms. Libbey had directed Ms. Phelps to fix a problem with an affidavit of service that Ms. Phelps had just submitted to the clerk of court's office. Prior to electronically filing the affidavit of service, and after the affidavit had been sworn to, Ms. Phelps had changed an

address on the affidavit. The employer viewed this act as categorically different than correcting a misspelled name or word and tantamount to perpetrating a fraud upon the court, which could subject the employer or its client to legal consequences. Mr. Deahr had sent an email message to Ms. Phelps and to Ms. Libbey about the issue. Ms. Libbey spoke from her desk when she asked Ms. Phelps in a raised voice whether she had submitted the affidavit incorrectly and directed Ms. Phelps to correct the issue immediately. Ms. Libbey did not yell, but spoke loud enough for the other staff to hear the question and directive. Ms. Libbey did not use profanity and did not employ derogatory epithets. Ms. Phelps felt the communication was demeaning and walked out instead of complying with the directive. Ms. Phelps had no personal items in the workplace aside from a few food items and, thus, left nothing of significance behind when she left abruptly.

At 9:39 a.m., a coworker who was on friendly terms with Ms. Phelps sent Ms. Phelps a text message asking, "Are you going to talk to Jared? I'm not sure he'll be in the office today." At 9:46 a.m., Ms. Phelps replied, "No I'm quitting. I dont [sic] this anymore. I've bent over backwards for that job and get treated like complete shit and I cant [sic] do it anymore."

At 11:30 a.m., Mr. Deahr called Ms. Phelps and asked whether she was planning to come back to work. Mr. Deahr was unaware of the text messaging between Ms. Phelps and the other employee. Ms. Phelps and Ms. Deahr disagree on what each said thereafter. Ms. Phelps asserts that she told Mr. Deahr that she would not return until Mr. Deahr met with her to discuss Ms. Libbey. Mr. Phelps asserts that Mr. Deahr then told her, "Don't come back." Mr. Deahr asserts that Ms. Phelps said she would only return if she could no longer be managed by Ms. Libbey and that Mr. Deahr told Ms. Phelps it sounded like she was quitting. Ms. Phelps did not return to the employment.

After Mr. Deahr spoke with Ms. Phelps, he spoke with other staff regarding whether they perceived Ms. Libbey's approach as rude. No one he spoke with supported Ms. Phelps perception of Ms. Libbey's management style. While Ms. Phelps asserts that she had spoken with Mr. Deahr six months earlier and a year and a half early about her concerns with Ms. Libbey's demeanor, Mr. Deahr asserts Ms. Phelps has not come to him with such prior concerns.

At the time Ms. Phelps walked off the job on March 6, 2020, the employment relationship was already strained due to Ms. Phelps' attendance. On March 3, 2020, Mr. Deahr met with Ms. Phelps and told her that her year-to-date attendance was problematic. Ms. Phelps had missed work on numerous occasions in connection with her teenaged son's refusal to go to school. Ms. Phelps had also recently missed work so that she could attend to personal business at the Iowa Department of Transportation. On March 3, Mr. Deahr told Ms. Phelps that he wished for the employment to continue, but that Ms. Phelps needed to fix her attendance and have no more unexcused absences. Ms. Phelps offered to resign. Mr. Deahr told Ms. Phelps that if wished for her to be gone, he would have already fired her. In light of Ms. Phelps walking off the job on March 3, and in light of the other recent attendance concerns, Mr. Deahr contemplated discharging Ms. Phelps from the employment if she elected to return.

Ms. Phelps established a claim for unemployment insurance benefits that was effective March 8, 2020. Iowa Workforce Development set her weekly state benefit amount at \$494.00. This employer is the sole base period employer. Ms. Phelps received \$3,952.00 in benefits for eight weeks between March 8, 2020 and May 2, 2020.

On March 24, 2020, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Phelps' separation from the employment. Mr. Deahr represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The weight of the evidence in the record establishes a voluntary quit, rather than a discharge. On March 6, 2020, Ms. Phelps elected to walk off the job early in her shift rather than perform her assigned duties as directed by Ms. Libbey. The employer did not tell Ms. Phelps to leave. Ms. Phelps left nothing of value in the workplace when she walked off the job. Almost immediately after Ms. Phelps walked off the job, a friendly coworker contacted her by text message to ask whether she would be speaking with Mr. Deahr. At that time, Ms. Phelps made her intent clear. Ms. Phelps stated plainly that she would not be speaking with Mr. Deahr because she was quitting the employment. Ms. Phelps did not contact the employer about returning to the employment. When Mr. Deahr contacted Ms. Phelps a couple hours after Ms. Phelps walked off the job to ask whether she would be returning, Ms. Phelps made clear that she would not be returning unless the employer met certain conditions. Whether those pre-conditions were not being supervised by Ms. Libbey versus otherwise diminishing Ms. Libbey's supervisory authority over Ms. Phelps, the employer was under no obligation to accommodate Ms. Phelps' conditions of return subsequent to Ms. Phelps walking off the job. Whether the employer told Ms. Phelps, two hours after she walked off the job, not to return, or whether the employer merely acknowledged Ms. Phelps' decision not to return, is not determinative of the quit versus discharge issue. Ms. Phelps initiated the separation from the employment when she walked off the job.

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 Admin. Code r. 871-24.25 provides, in relevant part, as follows:

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.
- (22) The claimant left because of a personality conflict with the supervisor.
- ...
- (27) The claimant left rather than perform the assigned work as instructed.

On the other hand, quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The weight of the evidence establishes a voluntary quit that was without good cause attributable to the employer. Nothing in the March 6, 2020, brief interaction between Ms. Libbey and Ms. Phelps—even as described by Ms. Phelps—rose to the level of intolerable and/or detrimental working conditions. Ms. Libbey did not sue profanity, did not use demeaning language, and did not otherwise behave in an abusive manner. Ms. Libbey conveyed an urgent, clear directive regarding an urgent matter. The situation would not have prompted a reasonable person to walk off the job or to otherwise quit the employment. Nor the evidence establish a pattern of conduct on the part of Ms. Libbey that prompt a reasonable person to leave the employment. The weight of the evidence establishes instead that Ms. Phelps made a significant error, chafed at having the error brought to her attention, disliked Ms. Libbey, disliked the work environment, and elected to walk off the job rather than perform the work as reasonably directed. Ms. Phelps is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Phelps must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Phelps received \$3,952.00 in regular state benefits for eight weeks between March 8, 2020 and May 2, 2020, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Phelps received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Phelps is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the Federal Pandemic Unemployment Compensation (FPUC) benefits Ms. Phelps received in connection with her claim.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The March 6, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment on March 6, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the Federal Pandemic Unemployment Compensation (FPUC) benefits the claimant received in connection with her claim.



James E. Timberland
Administrative Law Judge

May 20, 2020
Decision Dated and Mailed

jet/scn