

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHY A GRAY
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 15A-UI-10276-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/16/15
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated September 2, 2015, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 25, 2015. Claimant participated personally. Employer participated by Deb Bontje and Alisha Weber. Employer's Exhibits 1-6 and Claimant's Exhibit A were admitted into evidence.

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?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 16, 2015. Claimant quit work on August 17, 2015.

On August 17, 2015, claimant went to visit her doctor after she had suffered an angina attack on August 10, 2015 and had to be hospitalized. Claimant returned to work and attempted to work on August 15, 2015 and August 16, 2015. She was not comfortable at work and went back to her doctor.

Her doctor wrote out a work excuse stating that claimant was unable to work from August 17, 2015 through September 17, 2015. Claimant took that note into work, and told her manager that she was quitting. Claimant's reason for quitting was because of the stress of work and working too many hours. Claimant did not prove the number of hours worked, but stated that in

the last couple of months she would work 70 or more hours in a week. Employer stated that claimant would work 40 to 50 hours in a week.

Employer did not have a store manager for a number of months. Claimant was second assistant manager and had to assume a number of managerial duties. Employer told claimant in July that she would have to work evening hours as both the first and second assistant manager had been working the day shift, which was against company policy. Claimant was not happy with this shift in her hours worked. Claimant called up employer on August 3, 2015 to complain about the amount of stress that she was under and the number of hours worked. Employer did not remember the call, but allegedly told claimant to be patient, as there was, "light at the end of the tunnel."

Claimant did not see a positive reduction in her hours in the two weeks after registering her complaint, and actually saw her hours change to more disadvantageous hours than she had been working.

Claimant received unemployment benefits for two weeks in the amount of \$281.00/week. Employer did substantially participate in fact finding in this matter.

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 § 96.3(7)a-b, 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.

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 § 96.8, subsection 5.

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 § 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 § 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 states pursuant to § 602.10101.

Iowa Admin. Code r. 871-24.32(4) provides:

(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.

871 IAC 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 § 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 § 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 § 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 § 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 § 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 § 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was overworked and too stressed. Claimant mentioned to employer that her hours were too great within a couple of weeks of being told that she would have to work some evening hours. Claimant did not give employer a reasonable amount of time to adjust schedules and make additional hires prior to her quitting her employment.

The overpayment issue was addressed. Claimant has received a total amount of unemployment payments of \$539.00. Said payments are overpayments.

The issue of employer participation was addressed. Employer did substantially participate in the fact-finding interview such that employer's account will not be charged in this matter.

DECISION:

The decision of the representative dated September 2, 2015, reference 01, is reversed. 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 claimant was overpaid unemployment insurance benefits in the amount of \$539.00. The employer participated in the fact-finding process. The employer's account will not be charged.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css