

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HAROLD L ADAMS
Claimant

APPEAL 16A-UI-13613-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT B
Employer

**OC: 11/27/16
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
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 December 14, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2017. The claimant participated personally and was represented by Amanda Bartusek, attorney at law. The employer participated through Lawrence Dempsey, attorney at law. Employer witnesses included Heather Redenius, Human Resources Manager, Dennis Bair, Team Leader, and Larry Hare, Manager. Employer Exhibits A, B, C, D, E, F, G, H and I were admitted into evidence without objection. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer or was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a plant field operator and was separated from employment on November 22, 2016. The evidence is disputed as to whether he quit the employment or was discharged.

On November 7, 2016, the employer notified its employees to work mandatory overtime. The claimant began employment in 2008, and was aware of mandatory overtime requirements, as needed seasonally. The claimant was also diagnosed as a type II diabetic prior to employment, and as a result, requires routine medical appointments to monitor his condition. The claimant

reported he had an appointment at 3:00 p.m. to meet with his pharmacy to discuss his medical protocol. According to the claimant, he told Mr. Bair around noon about the appointment, and acknowledged Mr. Bair did not respond when told. Mr. Bair denied recollection of the claimant informing him of an appointment. At 3:00, the claimant was observed by Mr. Bair in the lunchroom. He was asked what he was doing and the claimant stated "eight hours was enough" and that he was going home. The claimant was advised to go talk to Mr. Hare, and said he was leaving and did not perform the overtime or follow up with Mr. Hare as directed. Mr. Bair reported his account of the conversation to Mr. Hare (Employer Exhibit G). A co-worker who also observed the exchange (between Mr. Bair and the claimant), furnished a written statement upon the employer's request (Employer Exhibit I).

The claimant was scheduled to have a pre-disciplinary meeting with the employer on November 22, 2016, in response to the claimant's refusal to work overtime and leaving without permission on November 7, 2016 (Employer Exhibit F). The purpose of the meeting was to gather additional statements and information by the claimant to mitigate discipline. Prior to November 7, 2016, the claimant had received discipline for different reasons including a failure to report a bio-solids spill (Employer Exhibit B), preventable motor vehicle accidents (Employer Exhibit C), causing property damage (Employer Exhibit D), and a roll-over accident with a semi-tractor (Employer Exhibit E).

The claimant attended the November 22, 2016 pre-disciplinary meeting and originally stated he had a doctor's appointment and as the reason he did not perform overtime. Then, the claimant acknowledged he had been at the pharmacist, not doctor. The claimant was placed on further administrative leave pending review at the conclusion of the meeting. The claimant gave Mr. Hare his keys and went to his locker to retrieve items. Afterwards, the claimant, on his own volition, went to the human resources office, and spoke to Jeanette Kirkpatrick, who was not present for the disciplinary meeting. He requested paperwork for his IPERS pension to be paid out. As a result of his request, he was given a "notice of retirement" form (Employer Exhibit A) and completed it. The claimant stated he thought he had been fired, and denied quitting. However, he later then submitted a pharmacy's note to substantiate his absence (Employer Exhibit H) for unknown reasons. The employer did not tell the claimant verbally or in writing that he was discharged, terminated or fired; only that he was on a continued administrative leave. Separation subsequently ensued before the employer made a further finding of discipline, as the employer accepted the claimant's voluntary resignation/retirement.

The administrative record reflects that claimant has a weekly benefit amount of \$447.00 but has not received unemployment benefits, since filing a claim with an effective date of November 27, 2016. The administrative record also establishes that the employer did participate in the December 12, 2016 fact-finding interview by way of Vivone Abdel-Razeq, Human Resources Analyst.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged, but quit the 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) 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:

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.25(37) 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.

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. In this case, it is true that the claimant's job was in jeopardy, as he attended the November 22, 2016 pre-disciplinary meeting at 9:00 a.m. to discuss his failure to work mandatory overtime on November 7, 2016. The credible evidence however, does not support that the claimant was discharged, but rather, quit the employment following the disciplinary meeting, and it was accepted by the employer. The claimant had never been warned for failure to work required overtime in his six year employment history, although he had a history of discipline related to other matters (Employer Exhibits B, C, D, and E).

While the claimant was placed on further administrative leave after the November 22, 2016 meeting, no decision had been made to discharge the claimant prior to separation, nor was the claimant given the option to resign in lieu of termination. Rather, at the end of the meeting, the employer continued to place the claimant on administrative leave, and provided him an opportunity to submit medical documentation discussed in the meeting. No words about being fired, discharged or terminated were used by the employer either verbally or in writing. The credible evidence presented does not support that the claimant was discharged at the meeting,

or shortly thereafter, nor would it be logical to ask the claimant to furnish additional documentation if he was discharged.

Further, the administrative law judge is persuaded that the claimant volunteered to clean out his locker and hand over his keys following his meeting. The claimant then voluntarily went to the human resources officer to discuss applying for his pension, and voluntarily signed the document labeled "notice of voluntary retirement" (Employer Exhibit A). Because the claimant had tendered the "notice of voluntary retirement" on November 22, 2016 (Employer Exhibit A), the employer deemed the claimant had separated from employment and did not take any further action when it received the subsequent pharmacy note (Employer Exhibit H).

Based on the credible evidence presented, it was the claimant's voluntary actions after his disciplinary meeting which triggered separation. In the context of the Iowa Employment Security Law, the separation is considered a quit and the claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Based on the evidence presented, the administrative law judge concludes that the claimant's decision to quit after his disciplinary meeting and request disbursement of his IPERS benefits may have been a personally compelling reason to quit the employment, but he has failed to establish he quit the employment for a good cause reason attributable to the employer. Benefits are denied.

The claimant is ineligible for benefits, but has not been paid benefits since filing his claim. Therefore the issues of overpayment and relief from charges are moot.

DECISION:

The December 14, 2016, (reference 01) decision is reversed. The claimant was not discharged but quit the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Because the claimant has not received benefits, there is no applicable overpayment.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs