

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RANDY E SONNENBURG
Claimant

APPEAL NO. 14A-UI-01794-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWN CUSTOMER DELIGHT GROUP INC
Employer

OC: 12/29/13
Claimant: Respondent (2)

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 February 7, 2014, reference 02, decision that allowed benefits to the claimant and that held the employer's account could be charged based on an agency conclusion that the claimant had voluntarily quit the employment due to a change in the contract of hire. After due notice was issued, a hearing was held on March 4, 2014. Claimant Randy Sonnenburg did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Marlene Sartin of Mississippi Labor Consultants, a sub-contractor to Employers Unity, L.L.C., represented the employer and presented additional testimony through Kelly Betts. The administrative law judge took official notice of the agency's administrative record (DBRO) of benefits paid to the claimant. The administrative law judge took official notice of the documents submitted for and generated in connection with the fact-finding interview, but did so only for the purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

Whether Mr. Sonnenburg's voluntary quit from the part-time employment was for good cause attributable to the employer.

Whether Mr. Sonnenburg was overpaid benefits.

Whether the employer's account may be charged for benefits paid to the claimant.

Whether the employer participated in the fact-finding interview that led to the February 7, 2014 decision that allowed benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randy Sonnenburg was employed by Brown Customer Delight Group, Inc., doing business as McDonalds, as a part-time swing shift manager from February 2012 until April 28, 2013, when he voluntarily quit the employment. Mr. Sonnenburg's immediate supervisor was Toby Fetters,

Store Manager. Mr. Sonnenburg last performed work for the employer on April 23, 2013. Mr. Sonnenburg was absent without notifying the employer on April 27, 2013. On April 28, 2013, Mr. Sonnenburg delivered his restaurant keys to Mr. Fetters. At the time Mr. Sonnenburg quit the employment, the employer continued to have the same work available for him. Mr. Sonnenburg's wage throughout the employment was \$7.75 per hour. This was the wage set forth on the written job offer that Mr. Sonnenburg signed.

Mr. Sonnenburg established a claim for unemployment insurance benefits that was effective December 29, 2013. So far, Mr. Sonnenburg has received \$1,305.00 in benefits for the period December 29, 2013 through March 1, 2014. This employer is Mr. Sonnenburg's sole base period employer.

A fact-finding interview preceded the entry of the February 7, 2014, reference 02, decision that allowed benefits to Mr. Sonnenburg. Stacey Hadfield, a Claims Specialist, with Employer's Unity represented the employer at the fact-finding interview. The Claims Deputy's notes from the fact-finding interview indicate that Ms. Hadfield provided the following oral statement: "The only information we have is that he was a no-call/no-show. He is a voluntary quit, by the employer." Ms. Hadfield had completed the employer's protest of the claim and had identified herself as the only person who would participate in the fact-finding interview. At the time of protest, Ms. Hadfield had submitted a memo that she had drafted. The memo indicates as follows:

The claimant voluntarily quit by job abandonment. The claimant did not call or show for scheduled shifts. The claimant did not exhaust all options prior to resigning. Continuing work was available at the time of separation.

The employer did not having anyone with personal knowledge of the claimant's employment, or of the claimant's separation, participate in the fact-finding interview. Nor did the employer have such persons on stand-by to participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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.

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). 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. See 871 IAC 24.25.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

871 IAC 24.25(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The evidence in the record establishes a voluntary quit due to dissatisfaction with the established wages. The wages remained unchanged from the time of hire. There was no change in the contract of hire. Mr. Sonnenburg voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Sonnenburg is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews. 24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,305.00 in benefits for the period of December 29, 2013 through March 1, 2014. The claimant did not receive benefits due to fraud or willful misrepresentation. The employer failed to participate in the finding interview within the meaning of the law. The employer representative provided minimal and general information, lacking in specifics, because the representative lacked personal knowledge of the claimant's employment. The employer did not have anyone with personal knowledge of the claimant's employment on stand-by to provide information for the fact-finding interview. For these reasons, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. The employer's account will not be charged for benefits paid to the claimant for the period on or after March 4, 2014.

DECISION:

The Claims Deputy's February 7, 2014, reference 02, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$1,305.00 in benefits for the period of December 29, 2013 through March 1, 2014. The employer did not participate in the fact-finding interview within the meaning of the law. The claimant is not required to repay the overpaid benefits. The employer's account may be charged for the overpaid benefits. The employer's account will not be charged for benefits paid to the claimant for the period on or after March 4, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css