

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA L BRUNT
Claimant

HY VEE INC
Employer

APPEAL 22A-UI-07911-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/22
Claimant: Appellant (2)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.3(7) - Overpayment
Iowa Admin. Code r. 871-24.25(28) - VQ - Reprimand

STATEMENT OF THE CASE:

Employer/Appellant, Hy-Vee, Inc., filed an appeal from the March 16, 2022, (reference 03) unemployment insurance decision that granted benefits based upon records saying claimant did not voluntarily quit work on 01/31/22 but was discharged by employer and employer has failed to furnish information to contrary, with no evidence of any willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2022. Claimant, Joshua Brunt, personally participated. Employer participated through Judy Berry, party representative with corporate cost control, and Lee Kenyon, assistant vice-president of human resources. Employer's exhibits of R-1 and R-2 were admitted into evidence. Judicial notice was taken of the administrative record, including DBRO, and KFFD.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Was the claimant overpaid benefits?

Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed part-time with a varied schedule as an order filler, starting January 4, 2020. His last day worked was January 31, 2022. He was separated from employment on January 31, 2022, when he voluntarily quit.

Claimant was written up on January 31, 2022. He was given a five-day suspension commencing February 2-7, 2022. (See R-2, page 6). Claimant was to report back to work on February 10, 2022. His normal days off were February 1, 2, 8 and 9, 2022. After receiving his suspension, he worked some of his shift, but then went to confront Mr. Noel over the suspension. When his

efforts were unsuccessful, he said he was “pissed” and was going home. Mr. Noel told him he should not be leaving and still has a job to do, but claimant told him it did not matter as he was suspended. Mr. Noel reminded him the suspension was not effective yet and he needed to stay and complete his shift. Claimant started to leave, and Mr. Noel asked him where he was going, to which Claimant replied he was going home and as he left, he said, “fuck this place.” (See R-2, page 4). Employer started the process of termination for insubordination and job abandonment but went with “voluntary resignation - job abandonment” for the reason of separation. (See R-2, pages 4 and 3). Employer took claimant leaving mid shift, after getting disciplined and saying “fuck this place” as he was leaving as quitting.

Claimant never returned to work. While he argues he did not quit, he failed to report to work on February 10, 2022, which would have been his first day back after his suspension. He initially claims it was because he was locked out of his payroll account and when he called on February 10, 2022, to find out why, he got the run around and it was only days later he learned he was discharged from work. When asked how that explains not reporting to work on February 10, 2022, which was supposed to be his first day back from his suspension, he changed his story to being told he was told during his call on the 10th that he no longer had a job. Claimant had inconsistencies in his testimony which tended to go from saying things not favorable to him to changing to a position that was more favorable to him.

Records show claimant has received \$5,160.00 in benefits on this claim. His weekly benefit amount is \$430.00. Benefits were paid over the course of benefit weeks ending February 19, 2022, through May 7, 2022. Employer participated in the fact finding phone call and submitted documents for fact finding. Therefore, per the definitions in Iowa Admin. Code r. 871-24.10(1), employer did participate in fact finding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant’s separation from the employment was a voluntary quit without good cause attributable to the employer.

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.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness’s appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness’s interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer’s version of events to be more credible than the claimant’s recollection of those events and claimant’s recollection of events that are less favorable to him more credible than when he then changes his version to a more favorable accounting.

Claimant got reprimanded on January 31, 2022, with an upcoming suspension. When he was not able to get employer to change their mind, he was upset about it, left his shift early after being told he was not suspended that day, still had a shift to complete and should not be leaving early, to which claimant left and while leaving said, “fuck this place.” Claimant did not return to work.

Claimant voluntarily quit work on January 31, 2022. While claimant’s leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The next issue is whether claimant has been overpaid benefits. 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.

b. (1)(a) 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 section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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 section 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.

(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 state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 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 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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 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 section 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 section 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 section 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 section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because claimant's separation was disqualifying, any benefits paid on the claim would be benefits to which he was not entitled. The unemployment insurance law provides benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The law also states an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits..." Iowa Code § 96.3(7)(b)(1)(a).

Claimant received \$5,160.00 in benefits on this claim. Employer did participate in the fact-finding. The telephone interview and by submitting information. Claimant is disqualified as of the benefit week ending 02/05/2022. The overpayment occurred while he was disqualified. Because employer participated in fact finding, claimant does have to repay the overpayment of benefits and employer shall not be charged.

DECISION:

The March 16, 2022, (reference 03) unemployment insurance decision is **REVERSED**. Claimant voluntarily quit without good cause attributable to employer on 01/31/2022. 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. Claimant has been overpaid unemployment insurance benefits in the amount of \$5,160.00 that do have to be repaid as employer adequately participate in fact finding and therefore employer shall not charge.



Darrin T. Hamilton
Administrative Law Judge

June 7, 2022
Decision Dated and Mailed

dh/kmj