IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARY B STECKLEIN
Claimant

BRAD DEERY MOTORS
Employer

APPEAL NO. 16A-UI-06200-TN-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/01/16
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Brad Deery Motors, the employer, filed a timely appeal from a representative's decision dated May 24, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding the claimant voluntarily quit work on May 6, 2016 because of detrimental working conditions. After due notice was provided, a telephone hearing was held on June 20, 2016. Claimant participated. The employer participated by Ms. Jackie Nolan, Hearing Representative, and witnesses: Mr. Joel Kilburg, Office Manager; and Mr. Nick McCutcheon, General Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mary Stecklein was employed by Brad Deery Motors from August 3, 2015 until May 6, 2016 when she voluntarily quit employment. Ms. Stecklein was employed as a full-time internet sales associate and was paid by the hour and by commission. The claimant at the time of the claimant's job separation reported directly to the company's general sales manager, Mr. McCutcheon.

Ms. Stecklein left her employment with Brad Deery Motors on May 6, 2016 due to general dissatisfaction with the work environment and her ongoing disagreement with management decisions.

On May 6, 2016, the claimant had been questioned by the company's general sales manager about her failure to inform a potential internet buyer that a vehicle he was interested in appears to have been sold and had been bought back by the dealership because of problems with the vehicle. Mr. McCutcheon had also questioned Ms. Stecklein about her availability to answer his questions about the sale in the preceding days. Because the claimant had not informed the

potential buyer of the "buyback" status of the vehicle, Mr. McCutcheon instructed the claimant to send information to the perspective buyer, obscuring a portion of the information that had identified the previous purchaser and the date that the vehicle was purchased back by the dealership.

Ms. Stecklein was upset because Mr. McCutcheon had questioned her about the information that she had provided to the customer and also disagreed with the management decision not to provide the name of the previous buyer or the date of the re-purchase by the dealership. Mr. McCutcheon felt the name of the previous purchaser was not information that needed to be disclosed and did not want the date of the buyback included because the re-purchase had taken place some months in the past. Because of the events that day, the claimant wanted to take the afternoon off and go home early that day. When Mr. McCutcheon denied her request for staffing reasons, the claimant quit employment.

It appears that Ms. Stecklein had become increasingly dissatisfied with her work environment as time had progressed. She had complained in the past because a manager on one occasion had stated, "Goddammit" making reference to an error on the part of the claimant, and was also dissatisfied because she believed that the company had not quickly enough solved a sewage problem in the building where she had worked. Ms. Stecklein had also disagreed with statements that sales managers had made believing them at times to be condescending and disparaging. Ms. Stecklein usually complained to the internet manager about her dissatisfactions but had not taken them further up the chain of command.

The claimant's direct manager had left employment prior to May 6, 2016 and although the company's general sales manager had encouraged Ms. Stecklein to remain employed, the claimant chose not to do so and left her employment that day.

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.

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 608, 612 (Iowa 1980) and Peck v. Employment Appeal Board, 492 N.W. 2d 438 (Iowa Ct. 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Services, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

When a person voluntarily quits the employment due to dissatisfaction with the work environment or an inability to work with other employees, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (6).

In the case at hand, the claimant was generally dissatisfied with her work environment and had difficulty working with the company because she disagreed with management.

Most recently the claimant was upset because a sales manager had stated, “Goddammit” while expressing his dissatisfaction with the claimant’s failure to provide information about a sale to him. The evidence does not establish the sales manager directed inappropriate language at Ms. Stecklein but the statement was made in a more rhetorical sense to emphasize his displeasure. Ms. Stecklein had complained about the statement to her manager but had not gone up the chain of command.

The final incident that caused the claimant to leave employment took place on May 5 and May 6, 2016. On those dates the claimant had been questioned by management about her failure to follow up with an internet sales lead that had come to her several days before. The claimant had not provided information about a “buyback” to the perspective buyer and when the general sales manager asked the claimant to prepare a copy of the buyback information and forward it to the perspective buyer, the claimant was upset because information that was not pertinent to the buyback was to be redacted from the copy. Ms. Stecklein decided to leave her employment when her request to leave work for the afternoon was denied because of staffing considerations.

While the claimant’s reasons for leaving employment may have been good from her personal viewpoint, the administrative law judge concludes that based upon the evidence in the record, that the claimant’s reasons were not good-cause reasons attributable to the employer. The employer’s questioning of the claimant about what actions she had taken on a perspective internet sale was reasonable and the employer’s decision to redact a portion of the buyback information that was not pertinent was a management decision that did not directly affect Ms. Stecklein. The employer’s decision denying the claimant’s request to take the afternoon off was also reasonable under the attendant circumstances. Accordingly, the claimant is disqualified from the receipt of unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of $1,860.00 since filing a claim with the effective date of May 1, 2016 for the week ending dates May 7, 2016 through June 11, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview and make a firsthand witness available for rebuttal.

Iowa Code § 96.3-7, 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.
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> 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 section 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 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. 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 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 the claimant’s separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later to be 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 upon a reversal on appeal of an initial determination to award benefits on an issue regarding 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 employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code section 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits since the employer did participate in the fact-finding interview. The claimant is obligated to repay to the agency the benefits she received and the employer’s account shall not be charged.

DECISION:

The representative’s decision dated May 24, 2016, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of $1,860.00 and is liable to repay that amount. The employer’s account shall not be charged because the employer participated in the fact-finding interview.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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