

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SARA CHELLEEN-LOEHR
Claimant

APPEAL NO. 18A-UI-12040-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CERIDA INVESTMENT CORPORATION
Employer

**OC: 11/11/18
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Cerida Investment Corporation (employer) appealed a representative's December 6, 2018, decision (reference 01) that concluded Sara Chelleen-Loehr (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 3, 2019. The claimant participated personally. The employer participated by Cindy Pesa-Smith, Corporation Operations Manager, and Deborah Fagervik, General Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant previously worked for Farm Journal from August 23, 1999, to September 5, 2017. The employer purchased Farm Journal on November 6, 2017. She was hired on September 5, 2017, as a full-time general manager. When she was hired by the employer, the claimant was elevated to manager in the Webster City, Iowa, telemarketing location.

On August 30, 2018, the claimant was in manager meetings with the corporate operations manager. The corporate operations manager told the group they did not need to take notes and she would tell them when they should take notes. She also talked about what would happen if things were not done correctly or if staff did not do their jobs. She said, "I am coming after Sara". The claimant performed her job and nothing happened to her.

The employer handled a Farm Journal campaign for a free subscription to the Journal if people who answered their telephones provided certain data. The claimant was in charge of the campaign and training at the Webster City, Iowa, location. Employees were directed to use a

specific script and ask certain questions. In the final quarter of the 2018, other centers were added to fulfill the contract by the end of the year.

The claimant provided the training to general managers at other centers in Ohio, North Dakota, Pennsylvania, and Kansas. Many employees did not following the training guidelines and the data was unusable. The claimant provided this information to the corporate operations manager. Those employees were reprimanded or terminated.

On November 5, 2018, Farm Bureau asked the claimant and employees in management for accountability for cost overruns. The corporate operations manager responded on November 5, 2018. On November 6, 2018, in response to the email, the claimant gave her resignation effective immediately. The claimant's resignation said she quit because she did not want to work for a company "that did not realize the importance of quality" for clients, did not want to be a "scapegoat", and other departments issues. She also quit to focus on herself and her family.

The claimant filed for unemployment insurance benefits with an effective date of November 11, 2018. She received \$3,395.00 in benefits after the separation from employment. The employer participated personally at the fact finding interview on November 27, 2018, by Cindy Pesa-Smith.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

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.

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 claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer she was leaving and quit work. The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant argues that she quit due to intolerable or detrimental working conditions. The conditions that she believes were intolerable or detrimental are her dissatisfaction with her supervisor, her employer's business decisions, and the possibility of being reprimanded for cost overruns.

When an employee quits work because she is dissatisfied with the work environment, has a personality conflict with her supervisor or after having been reprimanded, her leaving is without good cause attributable to the employer. The issues that comprise the claimant's description of an intolerable or detrimental workplace when taken individually are presumed to be without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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 section 96.3(7)a, b.

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.

The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

DECISION:

The representative’s December 6, 2018, decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant’s weekly benefit amount provided the claimant is otherwise eligible.

The claimant has received unemployment insurance benefits that she was not entitled to receive. The employer participated personally in the fact finding interview and is not chargeable. The claimant is overpaid unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs