

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE K MUSSMANN
Claimant

APPEAL NO. 15A-UI-02728-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"DOLGENCORP LLC
Employer

OC: 01/25/15
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Dolgencorp, LLC filed a timely appeal from a representative's decision dated February 19, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant left work on January 14, 2015 because of illness but after recovering offered to return to work but there was no work available. After due notice was provided, a telephone hearing was held on April 6, 2015. The employer participated by Mr. Chuck Weber, District Manager. Although duly notified, the claimant did not participate during the hearing. After the hearing was concluded, a late call was received from the claimant. Because the claimant provided no good cause for not participating, the claimant's request to re-open the record is denied.

ISSUES:

The issue in this matter is whether the claimant voluntarily left employment without good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Denise Mussmann was employed as a full-time sales associate by Dolgencorp, LLC and was paid by the hour. Her immediate supervisor was Ms. Judy Ram.

Ms. Mussmann chose to voluntarily leave her employment with Dollar General on or about February 20, 2015 because she wanted to seek other employment. Ms. Mussmann had previously requested a six-week medical leave of absence due to a non-work related medical condition. The claimant's request for the medical leave of absence had been approved by Dolgencorp, LLC and Ms. Mussmann was expected to return to work approximately February 6, 2015. The claimant chose not to return to work at the end of her medical leave of absence, but instead to request permission to take two weeks' vacation time in order to drive her daughter to another state to begin college. The employer approved Ms. Mussmann's request to take

vacation time and expected the claimant to return to work on February 20, 2015. At the end of the two-week vacation period that Ms. Mussmann had requested, the claimant voluntarily resigned her position with Dollar General store indicating that she was leaving to find other employment. Ms. Mussmann voluntarily left her employment with the company at that time although work was available to her. The claimant had not been told by the company that there was no work. The employer expected Ms. Mussmann to return to work, but the claimant chose not to do so.

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.

The evidence in the record establishes that the claimant had not been separated by Dolgencorp, LLC due to lack of work, but that the claimant's separation took place because Ms. Mussmann had submitted her resignation from employment stating that she was leaving for other work. The claimant had previously requested a six-week medical leave of absence that had been approved by the employer and upon return requested an additional two weeks' vacation time off work. The employer granted the claimant's request for vacation time and expected Ms. Mussmann to return to available work at the end of the additional two-week period. Instead of returning, Ms. Mussmann at that time quit her employment without good cause attributable to the employer.

It is the employer's belief that Ms. Mussmann had delayed in submitting her resignation after she had been told that an employee cannot use remaining vacation time in lieu of a notice period and chose to use her remaining vacation time before she submitted her resignation from employment. The claimant's reasons for leaving were her personal reasons and not caused by the employer.

Based upon the evidence in the record, the administrative law judge concludes that the 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.

Because the claimant has been deemed ineligible for benefits, any benefits claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$612.00 since filing a claim with an effective date of January 25, 2015 for the weeks ending January 31, 2015 through February 14, 2015. The administrative record also establishes the employer did not participate in the fact-finding interview or make any 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.

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 un rebutted 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 received 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 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 not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

DECISION:

The representative's decision dated February 19, 2015, reference 01, is reversed. Claimant voluntarily 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 \$612.00. Claimant is not liable to repay that amount because the employer did not participate in the fact finding. The employer's account shall be charged for the overpayment.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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