

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM D MACK
Claimant

APPEAL NO. 14A-UI-05327-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 04/27/14
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Agri Star Meat & Poultry, L.L.C. filed a timely appeal from a representative's decision that was dated May 14, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits finding the claimant quit work because of a change in the contract under which he was hired. After due notice, a telephone hearing was held on June 11, 2014. Claimant participated. The employer participated by Ms. Laura Roney, Payroll/Human Resource Assistant, Mr. Drew Vernazt, Shipping Manager, and Ms. Samantha Smerud, Lead Shipping Foreman.

ISSUE:

At issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: William Mack was employed by Agri Star Meat & Poultry, L.L.C. from August 23, 2012 until April 28, 2014 when he quit his employment. Mr. Mack was initially hired as a shipping department hourly employee. In August 2013 the claimant was promoted to the position of a shipping foreman and worked under the direction of Samantha Smerud, the company's "lead" shipping foreman. Mr. Mack was employed full time and was paid at the rate of \$14.25 per hour in his position of shipping foreman. His immediate supervisor was Samantha Smerud.

Mr. Mack quit his employment on April 28, 2014 rather than accept a disciplinary demotion to the position of hourly shipping department worker. The employer had made a decision to demote Mr. Mack because the claimant had repeatedly demonstrated an unwillingness to follow the management directives that had been given to him by his supervisor, Samantha Smerud. Mr. Mack knew or should have known that Ms. Smerud had a management position above his and that he was required to follow Ms. Smerud's work directives, because he had been informed Ms. Smerud was a lead foreman in the department and because her title conveyed a management position above the claimant's.

Mr. Mack was often unwilling to follow reasonable directives given to him by Ms. Smerud and had often e:mailed Mr. Vernatz about his issues with Ms. Smerud. Mr. Vernatz had met with the parties on numerous occasions instructing them to resolve their differences and instructing Mr. Mack to be responsive to Ms. Smerud's directives.

On April 23, 2014, the claimant had left work early without the specific permission of Ms. Smerud or Mr. Vernatz. Ms. Smerud had instructed the claimant to have Mr. Vernatz authorize his leaving early that day. The claimant did not follow the usual course of action by calling Mr. Vernatz on the telephone but instead sent Mr. Vernatz an e:mail stating that he was leaving work early. When the claimant was questioned by Laura Roney of the company's Human Resource Department about whether he had permission to leave early, the claimant stated that he had received permission to do so. Mr. Vernatz had not received the e:mail at that time and had not given the claimant permission.

The following day, April 24, Mr. Vernatz met with the parties to discuss the claimant's previous leaving work early. At that time Mr. Mack was specifically warned he would "lose his foreman's hat" if he again left early without permission. Later that day Mr. Mack again had a dispute with Ms. Smerud and he requested to leave work early and Ms. Smerud denied the request. Mr. Mack again ignored the directive of his supervisor and left work early stating that he was "sick." The employer concluded that the claimant was following the usual pattern of wanting to leave early because he disagreed with his supervisor's work directives and concluded that the claimant had not only ignored his supervisor's directive but also had ignored the specific warning of a job demotion that had been given to him that day by the shipping department manager.

On April 28, 2014, the claimant was informed that he was being removed from the position of shipping department foreman because of his conduct. The parties did not discuss the rate of pay that the claimant would receive, but Mr. Mack believed that his pay might be reduced to that of an entry level worker. The employer's intention was to pay the claimant a substantially higher hourly rate than an entry worker because of his work experience in the department. The claimant did not accept the demotion and left his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant left employment with good cause that was attributable to the employer. It does not.

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 the case at hand, the employer chose to attempt to retain Mr. Mack as an employee in the shipping department but to remove him from his duties as a shipping foreman because the claimant had been unwilling to work in a cooperative way with his designated supervisor, the shipping department's lead foreman. The shipping department manager on numerous occasions had gone to great efforts to counsel Mr. Mack to work in a cooperative way with his supervisor and to follow her directives. After being counseled by the shipping director, Mr. Mack

would improve his demeanor and work in a more cooperative way with his supervisor for a period of time and then revert to argumentative behavior and failed to follow Ms. Smerud's directives.

The claimant chose to leave his employment when he was given a disciplinary demotion for his ongoing intentional refusal to follow the reasonable and work-related directives of the department manager to listen to and follow Ms. Smerud's work directives. The claimant was specifically warned on April 24, 2014 that if he left early that day he would be demoted. Mr. Mack chose to ignore the warning and left work early although permission to leave work early was specifically denied by the lead foreman, Ms. Smerud.

Although the administrative law judge is mindful that Mr. Mack maintains that he was "sick" that day, the administrative law judge concludes that the claimant's testimony strains credibility. The evidence in the record establishes that claimant was continuing a pattern of argumentative behavior to undermine his superior's authority. The disciplinary demotion was appropriate under the circumstances. While Mr. Mack's decision to leave his employment may have been a good decision from his personal viewpoint, his reasons were not attributable to the employer because the claimant's actions had caused his own demotion.

For the reasons stated herein, the administrative law judge concludes the claimant left employment under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his 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 \$1,986.00 since filing a claim with an effective date of April 27, 2014 for the weeks ending May 3, 2014 through June 7, 2014. The administrative record does not establish whether the employer participated in the fact-finding interview or made 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.

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 the claimant 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 upon a reversal of appeal of an initial determination to award benefits on an issue regarding the claimant's employment 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 if it is determined 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 to receive those benefits. Since the record does not establish whether the employer participated in the fact-finding interview, the issue of employer participation is remanded to the Claims Division for determination.

DECISION:

The representative's decision dated May 14, 2014, 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 his weekly benefit amount and is otherwise eligible. The claimant has been overpaid job insurance benefits in the amount of \$1,986.00. The issue of whether the claimant must repay the overpayment or if the employer will be charged due to employer participation in the fact finding is remanded to the Claims Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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