

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN R TUSING
Claimant

APPEAL NO. 14A-UI-08978-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

OC: 08/03/14
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 25, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged, based on an agency conclusion that the claimant had voluntarily quit due to detrimental working conditions. After due notice was issued, a hearing was held on September 17, 2014. Claimant Autumn Tusing participated. Barbara Buss of Sedgwick, f/k/a Xchanging/Cambridge, represented the employer and presented testimony through Susan Balta. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purposes of determining whether the employer participated in the fact-finding interview and whether the claimant engaged in fraud and/or dishonesty in connection with the fact-finding interview.

ISSUES:

Whether Ms. Tusing's voluntary quit was for good cause attributable to the employer. It was not.

Whether Ms. Tusing has been overpaid unemployment insurance benefits. She has been.

Whether Ms. Tusing must repay the benefits she has received.

Whether the employer's account may be charged for benefits already paid to the claimant and/or for future benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Autumn Tusing was employed by Goodwill Industries of the Heartland as a full-time production clerk from 2012 until June 17, 2014, when she voluntarily quit. Ms. Tusing's immediate supervisor was Susan Balta, Manager of the Cedar Rapids west store and District Manager for the west

and south heartland area. At the time, Ms. Tusing quit the employment, she was 10 weeks pregnant, was experiencing complications in the pregnancy, and had exhausted her available personal time off.

On June 15, 2014, Ms. Balta met with Ms. Tusing to discuss the need for Ms. Tusing to apply for leave under the Family and Medical Leave Act to preserve her employment. The June 15 meeting followed a reprimand that Ms. Balta had issued to Ms. Tusing for attendance. The absence that formed the basis of the reprimand had been an absence due to pregnancy-related illness and had been supported by a doctor's note. On June 15, 2014, Ms. Balta provided Ms. Tusing with FMLA application materials. Ms. Balta explained to Ms. Tusing that she would need to have her doctor fill out the FMLA application materials and return them to the employer. Ms. Balta explained to Ms. Tusing that the FMLA leave could be intermittent.

Ms. Tusing did not have her doctor complete the FMLA medical certification and did not return certification materials to the employer. Ms. Tusing decided instead to quit the employment after she worked her shift on June 17, 2014. Though the employer was facilitating Ms. Tusing's FMLA leave application, Ms. Tusing feared she might be discharged from the employment if she missed additional work. The employer's conduct in facilitating the FMLA application indicated that the employer was not in fact getting ready to discharge Ms. Tusing from the employment. Ms. Tusing did not notify Ms. Balta that she was going to quit the employment, but instead ceased appearing for work. Ms. Tusing sent a text message to a coworker indicating that she would not be returning to the employment. The coworker shared the text message with Ms. Balta. Ms. Tusing was not scheduled to work on June 18 or 19, 2014. Ms. Tusing was scheduled to work on June 20, 21 and 22, 2014. Ms. Tusing did not make contact with the employer on any of those days to indicate that she needed to be absent from the employment. Under the employer's attendance policy, three consecutive no-call, no-show absences were deemed a voluntary quit. The policy was set forth in the employee handbook that was shared with Ms. Tusing at the start of her employment and that the employer made available to Ms. Tusing.

On June 23, 2014, Ms. Tusing met with her doctor. At that time, the doctor told Ms. Tusing that she could return to work. No doctor had taken Ms. Tusing off work in connection with Ms. Tusing's absences from the workplace after June 17, 2014. No doctor had advised Ms. Tusing to leave the employment. Though Ms. Tusing had previously decided to quit the employment, Ms. Tusing decided at that point that she wanted to return to the employment. On June 26, 2014, Ms. Tusing returned to the workplace and spoke with an assistant manager about her desire to return to the employment. Ms. Tusing subsequently filed an on-line application with the employer, but was not contacted about returning to the employment.

Ms. Tusing established a claim for unemployment insurance benefits that was effective August 3, 2014 and, so far, has received \$2,016.00 in benefits for the seven-week period of August 3, 2014 through September 20, 2014.

Ms. Tusing participated in the August 2, 2014, fact-finding interview. Ms. Tusing did not engage in fraud or dishonesty in connection with the fact-finding interview. No one from Goodwill participated. A Sedgwick/Xchanging/Cambridge representative who lacked personal knowledge of the claimant's employment or separation provided a cursory statement at the fact-finding interview that was lacking particulars beyond reference to Ms. Tusing not calling in on June 20, 21 and 22, 2014. Sedgwick provided cursory documentation from Goodwill indicating that Ms. Tusing had quit the employment. The Goodwill representative who provided that documentation to Sedgwick lacked personal knowledge concerning Ms. Tusing's employment or her separation from the employment. The employer and employer representative had no one

with personal knowledge concerning the employment or the separation participate in the fact-finding interview or lined up to provide a rebuttal statement.

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 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa 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.

Iowa Admin. Code r. 871-24.25(4), (21), (22), (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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

The weight of the evidence in the record establishes that Ms. Tusing voluntarily quit the employment for personal reasons and without good cause attributable to the employer. Ms. Tusing did not quit upon the advice of a doctor for medical reasons. Ms. Tusing did not quit due to intolerable or detrimental working conditions. Ms. Tusing quit in response to a reprimand that Ms. Balta had issued to her for attendance a week prior to her quit. Ms. Tusing quit, rather than comply with the reasonable request that she provide FMLA medical certification of her continued need to be off work, intermittently or otherwise, in connection with her pregnancy-related illness and in the context of having exhausted available paid time off. Ms. Tusing's text to the coworker indicates that Ms. Tusing quit because she was dissatisfied with the work environment and the management. Ms. Tusing was absent three days without notifying the employer, in violation of the employer's attendance policy. Effective June 17, 2014, Ms. Tusing is disqualified for benefits until she has worked in and been paid wages for

insured work equal to 10 times her weekly benefit amount. Ms. Tusing must meet all other eligibility requirements. The employer's account will not be charged for future benefits.

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 § 96.3-7-a, -b.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(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.

The employer did not participate in the fact-finding interview within the meaning of the law. The employer had a third-party representative who lacked personal knowledge provide a cursory statement wholly lacking in particulars beyond reference to the claimant not calling in on June 20, 21, and 22. The employer provided a cursory statement from a Goodwill employee who lacked personal knowledge concerning the employment or the separation. The employer had no one lined up to provide a statement to rebut the claimant's statement.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$2,016.00 in benefits for the seven-week period of August 3, 2014 through September 20, 2014. Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the fact-finding interview within the meaning of the law, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

DECISION:

The claims deputy's August 25, 2014, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for future benefits. The claimant was overpaid \$2,016.00 in benefits for the seven-week period of August 3, 2014 through September 20, 2014. The claimant is not required to repay the overpayment. The employer remains subject to charge for the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs