

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA J KRUSE**  
Claimant

**APPEAL NO. 15A-UI-09148-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BERGMAN LAW FIRM PLLC**  
Employer

**OC: 07/19/15**  
**Claimant: Respondent (2/R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.3(7) – Overpayment – Employer Participation in Fact-finding

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 6, 2015, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on July 31, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on September 2, 2015. Claimant Jessica Kruse participated. Beau Bergman represented the employer and presented additional testimony through Lindzie Payne. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A through G into evidence. The administrative law judge took official notice of the Agency's administrative record of the fact-finding interview for the limited purpose of determining whether the employer participated in the fact-finding interview and, if no, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether Ms. Kruse separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jessica Kruse was employed by Bergman Law Firm as a part-time receptionist and legal assistant from August 2014 and last performed work for the employer on July 31, 2015. Beau Bergman is the principal of Bergman Law Firm was Ms. Kruse's immediate supervisor. Mr. Bergman's spouse, Megan Wettech, operates a separate business, Wettech Enterprises, from the same location.

Ms. Kruse was hired she was hired by both the law firm and Wettech Enterprises, as a part-time employee of each. Mr. Bergman operates the law firm and also is an employee of Wettech Enterprises.

On or about July 14, 2015, Ms. Kruse sent a text message to Megan Wettech advising that she was giving her two weeks' notice. Ms. Kruse wrote: "I'm giving my two weeks' notice. This insane. I kill myself for you guys for \$10/\$11 an hour." Ms. Kruse's wage at Wettech was \$11.00 per hour. Her wage at the law firm was \$10.00 per hour. Soon thereafter, Ms. Kruse sent another text message that included the following: "I will finish out my 2 weeks out of respect for you and Beau to allow time to find a replacement. I'm not paid enough to kill myself constantly. I understand hard work but also understand compensation. I'm worth more than that but I agreed to take a less pay because I believed in you and Beau." Ms. Kruse and Ms. Wettech had a falling out over a Florida business trip and Ms. Kruse's belief that Ms. Wettech was asking her to perform too much work. Mr. Bergman understood the text message to mean that Ms. Kruse was quitting both employment in two weeks. At no point prior to the separation from the employment did Ms. Kruse disabuse Mr. Bergman of that notion. Ms. Kruse provided a written resignation letter to Ms. Wettech regarding her separation from that employer. Mr. Bergman provided each employer with a separate, cursory resignation memo on Ms. Wettech's desk and on Mr. Bergman's desk. The note indicated, "Here is my official two-weeks' notice. My last day will be on July 31st."

When Ms. Wettech and Mr. Bergman received Ms. Kruse's resignation notice, they decided to invite a former employee, Lindzie Payne, to return to work for both business entities. On July 17, Ms. Payne met with the employers to discuss her return. On Monday, July 20, Ms. Kruse began to train Ms. Payne on Wettech matters. Shortly thereafter, Ms. Kruse began to train Ms. Payne on law firm business. Ms. Kruse spoke openly with Ms. Payne about her decision to leave both employments. Ms. Kruse went a step further and attempted to persuade Ms. Payne to quit on the same day Ms. Kruse would be quitting. Ms. Kruse worked until July 31, 2015 and then separated from the employment with Wettech and then separated employment with the law firm.

Ms. Kruse established a claim for benefits that was effective July 19, 2015. Ms. Kruse has been credited \$3,334.00 in benefits for the period of July 19, 2015 through September 12, 2015. A portion of the benefits has been credited against a prior outstanding overpayment. The remainder has been disbursed to Ms. Kruse via a debit card. Bergman Law Firm is base period employer for purposes of the claim.

On August 3, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Kruse's separation from Bergman Law Firm. Ms. Kruse did not participate. The law firm provided a copy of the resignation memo and an attached note indicating the memo had been provided to the law firm on July 16, 2015.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence in the record establishes that Ms. Kruse voluntarily quit the employment with Bergman Law Firm effective July 31, 2015. The employer reasonably concluded, based on the text message resignation notices and the written resignation notice that Ms. Kruse had indeed resigned the employment and that the resignation was to be effective July 31, 2015. The employer's conduct and Ms. Kruse's conduct during the period leading up to July 31, 2015 indicate the parties were winding down the employment during a voluntary quit notice period. At no time prior to the separation, did Ms. Kruse suggest to the employer or to her new coworker that her separation from the law firm was anything but voluntary.

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.

Iowa Admin. Code r. 871-24.25(13) 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 § 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 § 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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.

The weight of the evidence in the record indicates that Ms. Kruse's decision to leave the two separate employments was based on dissatisfaction with the wages for each. The evidence indicates there were other issues in the Wettech employment that contributed to Ms. Kruse's separation from that employer. There were no additional issues in the law firm employment.

The evidence fails to support Ms. Kruse's assertion that she or Ms. Payne was in fear of Mr. Bergman. Ms. Kruse's wage at the law firm remained unchanged from the time of hire to the separation date. Her dissatisfaction with the wage would not provide good cause attributable to the employer for her voluntary quit.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Ms. Kruse voluntarily quit the part-time law firm employment without good cause attributable to the employer, she is disqualified for benefits based on wage credits accrued during that employment 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. However, because the separation was from part-time employment, Ms. Kruse remains eligible for reduced benefits based on base period wage credits from other base period employment, provided she meets all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. The amount of the overpayment will need to be determined upon remand to the Benefits Bureau.

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 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.

The written materials the employer submitted for the fact-finding interview were sufficient, if unrebutted, to establish a voluntary quit without good cause attributable to the employer. The employer participated in the fact-finding interview within the meaning of the law. The employer's account will be relieved of liability for benefits paid to Ms. Kruse, including liability for benefits already paid to her.

Because the employer participated in the fact-finding interview, Ms. Kruse will be required to repay the overpaid benefits.

This matter will be remanded to the Benefits Bureau for redetermination of Ms. Kruse's eligibility for reduced benefits and entry of an appropriate overpayment decision in connection with the redetermination.

**DECISION:**

The August 6, 2015, reference 02, decision is reversed. The claimant voluntarily quit the part-time employment effective July 31, 2015. The employer's account will be relieved of liability for benefits paid to the claimant, including liability for benefits already paid. The claimant is disqualified for benefits based on the base period wage credits from the employment until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must also meet all other eligibility requirements. The claimant remains eligible for reduced benefits based on other base period employers, provided she meets all other eligibility requirements. This matter is remanded to the Benefits Bureau for redetermination of claimant's eligibility for reduced benefits and for entry of an appropriate overpayment decision in connection with the redetermination. The claimant must repay any overpaid benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs