

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY OLIVER
Claimant

APPEAL NO: 14A-UI-09452-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEACON OF HOPE MINISTRIES INC
Employer

OC: 08/17/14
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 5, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on October 2, 2014, and continued on October 8, 2014. The claimant participated in the hearing. Steve Roe, Director; Doug Crimmins, Intake Staff Supervisor; and Eric Howard, Chaplain participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time business administrator for Beacon of Hope Ministries from August 30, 2013 to August 9, 2014. He voluntarily quit his job by failing to call or show up for three days and then submitting a resignation email, effective immediately, August 9, 2014.

The claimant was a no-call/no-show Monday, August 4 and Tuesday, August 5, 2014. Director Steve Roe tried to call him and text him but did not get a response until late in the day August 5, 2014, at which time the claimant stated he would be back to work August 6, 2014. On August 6, 2014, the claimant was again a no-call/no-show and the employer went to the claimant's apartment because it was concerned about him. He would not respond to repeated phone calls, text messages, or knocks on the door and Mr. Roe then texted the claimant stating he was very concerned about him and if he did not respond to his text message in the next 30 minutes Mr. Roe was going to request the police do a welfare check on the claimant. The claimant then responded he was in Des Moines and had a stomach infection. The claimant did not call the employer or show up for work August 7 or 8, 2014. On August 9, 2014, he sent Mr. Roe an email stating he was resigning effective immediately and did so by email because he did not want to be talked out of leaving his employment.

The employer held discussions with the claimant about not taking on job responsibilities outside of his job description, which mostly involved his trying to direct other employees whom he did not supervise, or criticizing other employees for things the claimant felt they did not do correctly or up to his standards. The claimant also had a video camera set up in his apartment so he could check on other employees when he was not there and see if they were working overtime. The claimant did not have any supervisory authority.

The claimant was mostly dissatisfied with his treatment by Intake Staff Supervisor Doug Crimmins. On July 3, 2014, Mr. Crimmins was asked by Mr. Roe and several other staff members to speak to the claimant about his demeanor, attitude and approach with other staff members. There was concern because the claimant was negative, angry, condescending and opinionated with staff and clients. Mr. Crimmins believed the conversation went well and at the end of the meeting he asked the claimant if they were "cool" and the claimant said yes and shook Mr. Crimmins' hand. The claimant alleges Mr. Crimmins threatened him during that meeting after the claimant had made a negative comment about other employees working overtime the previous evening. The claimant stated Mr. Crimmins said, "You used my name in a conversation last night." The claimant said he tried to explain it was a "light-hearted" comment but Mr. Crimmins, knowing the claimant since before he started working for the employer, did not believe it was light-hearted but instead found it negative. The claimant said Mr. Crimmins said, "You used my name in a conversation last night" and when the claimant asserted it was light-hearted Mr. Crimmins said the claimant, "would not use his name anytime, ever." Mr. Crimmins testified he told the claimant if he was using his name when talking to a third party it was gossip and he should instead come to Mr. Crimmins if he was having a problem. The claimant testified he began feeling Mr. Crimmins did not like him.

The claimant and another employee worked in the thrift store area of the ministry while Mr. Crimmins and his staff worked in intake. There was tension between the claimant and his thrift store co-worker and the intake staff. The claimant felt there was an "us versus them" mentality and he and his co-worker were uncomfortable when they had to ask the intake staff for cleaning products or help from residents. Mr. Crimmins acknowledges the tension but attributes that mostly to the claimant's attitude and demeanor when interacting with the intake staff.

The claimant has claimed and received unemployment insurance benefits in the amount of \$980.00 since his separation from this employer.

The employer participated personally in the fact-finding interview through the statements of Mr. Roe, Mr. Crimmins and Mr. Howard.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was a no-call/no-show for at least five consecutive workdays in violation of the employer's policy. The employer made several attempts to contact the claimant and finally after the employer told the claimant it was going to call the police to conduct a welfare check if the claimant did not respond, he texted that he would be at work the following day, but then was a no-call/no-show that day as well as the next two days. The claimant decided to quit during this period of time because he was upset about various issues, mostly involving Mr. Crimmins and the intake staff.

There may have been some personality conflicts between the claimant and others but the claimant seems to have been the instigator of most of those situations. Mr. Crimmins, Mr. Roe and Chaplain Eric Howard were all interested in the claimant's well-being and his living a successful life, inside and outside the mission. That included correcting the claimant when his behavior did not meet its reasonable standards. It was not the claimant's job, or his place, to supervise others, even though he repeatedly tried to do so, despite the employer telling him not to as it was causing even more hard feelings with others, both employees and residents, because the claimant was either "tattling" on others or telling them what to do.

Finally, the claimant's description of his conversation with Mr. Crimmins July 3, 2014, cannot be characterized as threatening. Mr. Crimmins did not threaten the claimant and forbid him from using his name in any context. He did explain when it would be considered gossip and discouraged him from that behavior. While the claimant was upset with Mr. Crimmins and the intake staff, he has not demonstrated a hostile work environment or that the working conditions were unlawful, intolerable, or detrimental, as those terms are defined by Iowa law. The claimant has not met his burden of proving his leaving was for good cause attributable to the employer.

871 IAC 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 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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Mr. Roe, Mr. Crimmins and Mr. Howard. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$980.00.

DECISION:

The September 5, 2014, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. Because the employer participated in the fact-finding interview the repayment of those benefits cannot be waived. The claimant is overpaid benefits in the amount of \$980.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css