

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA J MASTERSON
Claimant

APPEAL 22A-UI-07629-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEASTERN RENAL DIALYSIS
Employer

**OC: 02/27/22
Claimant: Respondent (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On March 22, 2022, the employer/appellant filed an appeal from the March 14, 2022, (reference 01) unemployment insurance decision that allowed benefits based on claimant quitting because the working conditions were detrimental. Benefits were allowed effective February 25, 2022. The parties were properly notified about the hearing. A telephone hearing was held on May 5, 2022. The hearing record was combined with appeal 22A-UI-07896-CS-T. Claimant participated. Employer participated through administrator Mary Liechty. Administrative notice was taken of claimant's unemployment insurance benefits records. Exhibit 1, 2, 3, 4, 5, and 6 were admitted into the record.

ISSUES:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Should claimant repay benefits?
- III. Should the employer be charged due to employer participation in fact finding?
- IV. Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 5, 1998. Claimant last worked as a full-time patient technician. Claimant was separated from employment on February 25, 2022, when claimant voluntarily quit.

Three or four years ago claimant transferred to a different location with the employer. When claimant transferred locations she lost her scheduling seniority. In order to determine the schedule employer would have the employee with the most seniority pick their schedule in two-

week blocks of time. The process of picking the shifts would continue and repeat for each employee based on their seniority at the location until the person with the lowest seniority scheduled their hours. The manager would then review the schedule and make sure there was enough staff each shift to ensure patient safety. From time-to-time the manager would have to move employees from their desired shift to another shift to ensure proper coverage. Since claimant was new to her new work location, she had the lowest seniority for scheduling purposes.

Claimant was unhappy with not having seniority at the new location. Claimant rarely got to pick her schedule due to her seniority. Claimant became upset with her work schedule because she could not get Mondays off from work. Claimant did not specifically request the days off and would have to work them. Claimant felt bullied because people would take her name of a day and move it to a different day. Claimant did not know who changed her name.

Claimant also felt bullied because other staff members would not help her care for patients. Some staff members would occasionally help her and then stop helping her if other staff members showed up. Claimant felt like she was being treated unfairly and the younger staff members were unkind to her. Claimant did not report any instances of bullying to the employer.

On February 25, 2022, claimant was caring for a patient and did not set a blood pressure cuff correctly. Another staff member saw that it was done incorrectly and reported it to management. Claimant realized that she was being reported for the mistake and became upset with the staff member for not talking to her directly about it. At about 11:00 a.m. claimant notified the employer that she was quitting. Claimant signed a resignation letter and left. (Exhibit 3, pg. 2). The employer continued paying claimant PTO time until March 12, 2022.

Claimant was not reprimanded for the mistake. There was continuing work available to the claimant if she had not resigned her position.

Claimant filed for benefits with an effective date of February 27, 2022. Claimant's weekly benefit amount is \$531.00. Claimant received benefits the week ending March 5, 2022. Claimant stopped filing for benefits after the week ending March 12, 2022. Claimant did not receive benefits for the week ending March 12, 2022, due to reporting \$900.00 in wages. In total claimant received \$531.00 in unemployment insurance benefits.

The employer participated in a fact-finding interview and provided the employer's response to the notice of claim, claimant's resignation letter, and documentation about what happened.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*,

289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant had an intention to quit and carried out that intention by tendering her verbal resignation, then her written resignation, and then leaving. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

If claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

Claimant testified that she left because she was unhappy with not having seniority in scheduling and because she felt bullied by her co-workers. Claimant testified that she would work by herself because the younger staff was not kind to her. Claimant did not report any instances of bullying to the employer. In rebuttal testimony claimant brought up instances that occurred between three to five years ago to prove the detrimental work environment. These instances are so remote in time they were not considered by the administrative law judge in claimant's detrimental work environment claim.

Given the facts of this case claimant has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion

that claimant was unable to work with other employees, that she disliked the shifts she worked, and was dissatisfied with her work environment in general. These are not good cause reasons attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(6), (18), (21) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

(18) The claimant left because of a dislike of the shift worked.

(21) The claimant left because of dissatisfaction with the work environment.

As such, the claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Because claimant's separation was disqualifying, benefits were paid to her to which she was not entitled. The administrative law judge finds claimant has been overpaid regular state unemployment benefits in the amount of \$531.00 for one week ending March 5, 2022. Claimant is required to repay the regular state unemployment benefits because the employer participated in the fact-finding interview.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides, in pertinent part :

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) (a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

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.

Claimant has been overpaid state unemployment benefits in the amount of \$531.00 as she was not eligible to receive state unemployment benefits for the week ending March 5, 2022. The employer participated in the fact-finding interview, as a result, the employer's account shall not be charged. Claimant is required to repay these benefits.

DECISION:

The March 14, 2022 (reference 01) unemployment insurance decision is REVERSED. Claimant voluntarily quit employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid unemployed insurance benefits in the amount of \$531.00. These benefits must be repaid. The employer did participate in the fact-finding interview. The employer's account shall not be charged.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

May 25, 2022
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.