

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA RIESSEN

Claimant

APPEAL NO: 15A-UI-04893-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHEELDON FOODS IA LLC

Employer

OC: 03/29/15

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Wheeldon Foods Iowa, L.L.C. (employer) appealed a representative's April 16, 2015 decision (reference 01) that concluded Melissa Riessen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2015. A review of the Appeals Bureau's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Jenny Lundquist appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied. Overpayment not subject to recovery.

FINDINGS OF FACT:

The claimant started working for the employer in about June 2014. She worked part time (20 – 27 hours per week) as a crew person in the employer's Sioux City, Iowa fast food restaurant. Her last day of work was February 3, 2015. She was a no-call, no-show for work as scheduled on February 5, February 9, February 10, February 11, and February 13. She had told other employees that she was going to quit because she did not wish to work any longer in the back drive area. The employer concluded that she had voluntarily quit by job abandonment on February 13. On February 15 the claimant contacted the employer about the possibility of

getting her job back. The employer had been willing, and an appointment was set for February 16. The claimant then was a no-call, no-show for that meeting. The employer then determined that the claimant was not eligible for rehire.

The claimant established an unemployment insurance benefit year effective March 29, 2015. A fact-finding interview was scheduled and conducted on April 15, 2015 at 11:15 a.m. The Agency representative called the designated employer representative, but that person was not available, and no one participated in the fact-finding interview on behalf of the employer. The claimant received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. Rule 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

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

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; Rule 871 IAC 24.10.

The employer did not participate in the fact-finding interview. There has been no showing that the claimant received benefits due to fraud or willful misrepresentation; therefore, since the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

DECISION:

The representative's April 16, 2015 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 13, 2015, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid unemployment insurance benefits, but she is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs