

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA S LAUGHLIN
Claimant

CITY OF SABULA
Employer

APPEAL NO: 12A-UI-13683-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/11
Claimant: Respondent (2-R)

Section 96.5-1– Voluntary Quit
871 IAC 24.25(24) – IPERS Retirement
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 29, 2012, reference 01, that held claimant was discharged for no misconduct on October 4, 2012, and benefits are allowed. A telephone hearing was held on December 18, 2012. The claimant participated. Rhonda James, City Clerk, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant worked a pattern of seasonal part-time employment for the employer beginning May 16, 2005. She would usually begin mowing/trimming work in the spring and continued to late fall. Later during employment she began doing some maintenance and electrical work including reading meters once a month in the winter.

Claimant got together with IPERS about her retirement benefit and learned that she needed to be off work by early October 2012 in order to be eligible by November 30. She asked her supervisor on October 30 if she could be done for the year. The mowing was hard on her back and she believed it was near the end of the season. The supervisor had no objection. Claimant went to City Hall on October 4 and stated she was quitting. Claimant knew that she had to be separated from employment in order to be eligible for her IPERS benefit. The employer accepted the announcement as a resignation.

Claimant hopes to be re-employed in the spring of 2013 but no job offer has been extended by the employer at this time. Claimant has been receiving unemployment benefits on her claim.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(24) 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:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

The administrative law judge concludes that the claimant voluntarily quit without good cause attributable to the employer on October 4, 2012 due to getting her IPERS retirement benefit.

The moving cause of claimant's unemployment on October 4 is she needed to separate from employment by November 30 in order to qualify for IPERS. This employment separation is a voluntary quit as the employer did not end the job for the season but it was requested by claimant. The claimant needed to separate and quit employment to get IPERS.

Iowa Code section 96.3-7, as amended in 2008, provides:

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) 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. 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. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified in this matter, she has been receiving benefits that she is not entitled and the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated October 29, 2012, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on October 4, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs