

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LISA K PARKER**

Claimant

**LOWE'S HOME CENTERS LLC**

Employer

**APPEAL 20A-UI-11099-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/28/20**

**Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On September 9, 2020, Lowe's Home Centers, LLC (employer) filed an appeal from the August 31, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Lisa K. Parker (claimant) voluntarily quit due to detrimental working conditions. The parties were properly notified about the hearing held by telephone on October 28, 2020. The claimant participated personally. The employer participated through Bobbi Weepie, Operations/Assistant Store Manager. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history and the fact-finding documents.

**ISSUES:**

Did the claimant voluntarily quit employment with good cause attributable to the employer?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and the employer's account charged?

Has the claimant been overpaid Federal Pandemic Unemployment Compensation (FPUC) and must the benefits be repaid?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Overnight Stocker beginning on May 18, 2019, and her last day worked was June 21, 2020. The employer has a policy that states an employee will be considered to have abandoned their job after three consecutive absences.

When the claimant first began employment, she reported to Denny Lehman. At some point, Rodney Ringgenberg was brought on as another manager for her shift. The claimant disagreed with Lehman's management style and some of his decisions. In February 2020, Lehman was discharged.

The claimant then reported to Ringgenberg. One morning, when it was time for the claimant and her co-workers to leave, Ringgenberg took an additional half hour to open the front door of the store so they could leave. The claimant reported this to Bobbi Weepie, Operations/Assistant Store Manager, who counseled Ringgenberg that he needed to let the employees out of the store in a timely manner.

In May 2020, the claimant's co-worker Jason was instructed to do a stock count in the claimant's area. She had organized the boxes of product and Jason moved some of the boxes to the areas where he would be stocking. The claimant perceived Jason's actions to be harassing and felt he was messing up her area. She wrote on a box, "Grow the F Up." (Claimant's testimony) The message on the box was reported to Weepie who disciplined the claimant for her conduct.

On the claimant's last day worked, her co-worker Crystal approached her upset because she was being sent home. The claimant believed Ringgenberg was harassing Crystal by sending her home early, which he had done previously. The claimant felt she could no longer work in that environment and did not return for any scheduled shifts after June 21.

The claimant filed her claim for benefits effective June 28. She has received \$4,755.00 in regular unemployment insurance benefits and \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC). The employer did not have anyone available to participate in a phone interview and did not respond to the questionnaire sent by the fact-finder.

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

For the reasons that follow, the administrative law judge concludes the claimant's separation from employment was without good cause attributable to the employer. Benefits are denied. The claimant will not be required to repay the regular unemployment insurance benefits she received because the employer did not participate in the fact-finding interview and its account shall be charged. However, she will be required to repay the FPUC benefits she received.

##### *I. Did the claimant voluntarily quit employment with good cause attributable to the employer?*

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 provides, in relevant part:

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:

...

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

...

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

...

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

(22) The claimant left because of a personality conflict with the supervisor.

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.

The 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* When deciding what testimony to believe and determine the facts, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. The claimant contends that at some point between February and June, she was working in an aisle and Jason body-checked her. Ringgenberg witnessed the event, but he just laughed and commented that was the most woman Jason had touched all year. The administrative law judge is not persuaded the incident occurred as described. The claimant did not report this alleged incident to anyone at the time it occurred. While it was witnessed by Ringgenberg, her supervisor, the claimant had reported other issues with Ringgenberg to Weepie and could have reported this incident. The claimant also could not provide any date as to when this incident

occurred. The claimant's documentation related to this case was destroyed during the derecho; however, a reasonable person who experiences an incident like this and finds it unwelcome would have some recollection, even without written documentation, as to when it occurred.

The claimant has not met the burden of proof to establish that she left due to good cause attributable to the employer. She has not established that she was subjected to an intolerable or detrimental work environment. The claimant left due to a personality conflict with her supervisor and a dislike of the work environment, which does not constitute good cause attributable to the employer. Accordingly, benefits are denied.

*II. Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and the employer's account charged?*

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

Payment – determination – duration – child support intercept.

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.

(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.

Iowa Admin. Code r. 871-24.10(1) 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 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 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. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits.

As the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The employer did not provide a person to participate in the fact-finding interview and did not respond to the questionnaire sent by the agency. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

*III. Has the claimant been overpaid FPUC and must the benefits be repaid?*

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

...

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Since the claimant is not eligible for regular unemployment benefits, she is not eligible for FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The claimant was overpaid \$1,200.00 in FPUC from July 12 through July 25. She will be required to repay the benefits received unless this decision is overturned or she is found eligible for Pandemic Unemployment Assistance (PUA).

**DECISION:**

The August 31, 2020, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left the 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.

The claimant has been overpaid \$4,755.00 in regular unemployment insurance benefits; however, she is not obligated to repay the agency those benefits because the employer did not participate in the fact-finding interview and its account shall be charged. The claimant has been overpaid \$1,200.00 in FPUC, and she is required to repay those benefits.



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Stephanie R. Callahan  
Administrative Law Judge

November 2, 2020  
Decision Dated and Mailed

src/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.