

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTIN A HOLSTROM
Claimant

SNOW ROCK DAIRIES LLC
Employer

APPEAL 21A-UI-00757-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
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 November 24, 2020, the employer filed an appeal from the November 19, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 11, 2021. Claimant participated. Employer participated through owners Eduard Reuling and Resy Reuling. Employer's Exhibit 1 was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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

Can charges to the employer's account be waived?

Was the claimant overpaid Lost Wage Assistance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 4, 2018. Claimant last worked as a full-time laborer. Claimant was separated from employment on September 2, 2020, when she resigned.

When claimant was hired, she agreed to work on weekends if employer needed extra help.

Employer had several employees who tested positive for COVID 19 in August 2020 and were required to self-quarantine, so it was short staffed and claimant was required to work four weekends in a row.

Claimant was working on September 1, 2020, and was hoping to have one day off the next weekend. Claimant spoke to owner Resy Reuling about whether she would be able to have one day off the upcoming weekend. This alarmed Resy Reuling because they were so short on staff. Resy Reuling notified Eduard Reuling that claimant wanted time off the next weekend.

Eduard Reuling was stressed out and spoke harshly to claimant about the issue. Reuling raised his voice at claimant, but he did not use profanity. Reuling did not tell claimant she was terminated. Claimant finished up her chores and left. Claimant did not return to work and did not have further contact with employer.

The next day when claimant did not appear for work, Reuling sent claimant a message on "WhatsApp," stating that if she would not have quit, she would have had the next five days off because a worker who had been in quarantine was able to return. Claimant did not receive the message. Claimant did not follow up with employer to see if she had actually been terminated.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$13,604.00, since filing a claim with an effective date of August 30, 2020, for the 23 weeks ending February 6, 2021. The administrative record also establishes that the employer did not participate in the fact-finding interview through no fault of its own.

Claimant received one payment of Lost Wage Assistance in the gross, total amount of \$300.00 and has also received Federal Pandemic Unemployment Compensation since filing this claim.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant resigned or was discharged by employer. In this case, employer did not tell claimant she was terminated. Claimant testified that Reuling made her feel like he did not want her to come back. Claimant asserts Reuling told her that he was going to replace her. Reuling denies making that statement. Reuling's message the next day supports his testimony that he did not say anything regarding ending claimant's employment and that he believed she resigned when she did not appear for work the next day. The claimant made no attempt to contact Reuling to clarify whether she was still employed. The administrative law judge finds Reuling's version of what was said credible and that claimant decided not to appear for work because of the way Reuling treated her—not because she was discharged.

The next issue is whether claimant was separated for a good cause reason attributable to 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. 871-24.26(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.

In this case, claimant resigned after working several weekends in a row and Reuling raised his voice and became upset when she wanted a day off. There is no question Reuling's behavior was rude and inappropriate, but he did not use profanity or disparage claimant on a personal level. Over the past year, many employees in the United States have been required work to a demanding schedule that would have been unimaginable prior to the pandemic. While claimant was justified in feeling upset about her work situation, she did not establish the work environment would have been so intolerable to an objective person in the same situation that they would have felt there was no alternative but to resign. Claimant failed to establish she resigned for a good cause reason attributable to employer, and is disqualified from receiving benefits.

The next issue is whether claimant was overpaid benefits and should have to repay those benefits. Iowa Code § 96.3(7)a-b 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) (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 § 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 § 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 states pursuant to § 602.10101.

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 § 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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code § 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 § 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 § 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 § 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. The benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, employer did not participate in the fact-finding interview. Thus, claimant is not obligated to repay to the agency the regular unemployment insurance benefits she received in the gross, total amount of \$13,604.00.

The law also states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. . ." Iowa Code § 96.3(7)(b)(1)(a). Benefits were not paid because the employer failed to respond timely or adequately to IWD's request for information relating to the payment of benefits. Instead, benefits were paid because employer did not receive a call from the agency. Employer thus cannot be charged. Since neither party is to be charged then the overpayment is absorbed by the fund.

The waiver provision does not apply to Lost Wage Assistance, and claimant will be required to repay the \$300.00 she received in Lost Wage Assistance.

DECISION:

The November 19, 2020, (reference 01) unemployment insurance decision is reversed. The claimant resigned without good cause attributable to 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 unemployment insurance benefits in the amount of \$13,604.00 and is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview through no fault of its own and its account shall not be charged. The overpayment must be charged to the fund. Claimant is overpaid Lost Wage Assistance in the total, gross amount of \$300.00 and will have to repay those benefits.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a decision on whether claimant has been overpaid Federal Pandemic Unemployment Compensation.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 23, 2021
Decision Dated and Mailed

cal/kmj

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 due to disqualifying separations, 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>.