

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DESIREE D SMITH
Claimant

HAPPY HOLLOW PRESCHOOL AND CHILD
Employer

APPEAL NO. 20R-UI-07262-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Respondent (2R)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 31, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 5, 2020. Claimant participated personally. Employer participated by Angela Clifton, Hailey Mussmann, Winter Evans, and Diane Prenofil. Employer's Exhibits 1-4 were admitted into evidence.

ISSUES:

Whether claimant was discharged for misconduct?

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 14, 2020. Employer discharged claimant on February 14, 2020 because claimant had several inappropriate outbursts with various staff members and had threatened to quit to multiple coworkers.

Claimant worked in a daycare center for employer overseeing the one-year-old room. On February 14, 2020 claimant found out that her aunt had just passed away. Employer asked claimant if she was ok, and claimant responded that she was. Later in the day claimant stated

that she wanted to go home in the middle of her shift. Employer asked if it was related to claimant's aunt's passing, but claimant stated it was not.

Claimant had a history of being away from work for the month prior to her last day at work, suffering from chicken pox and dealing with other family members' illnesses.

Claimant came back to work shortly before the last incident and was frustrated with ratios of children to caregivers, food preparation, and duties employees were required to carry out. She was complaining to coworkers and telling them that she was sick of things and was quitting. The coworkers to whom claimant was talking were not supervisors and claimant had not officially quit to any of them.

The owner met with claimant later in the afternoon. When they met, they parties had a heated discussion, and employer asked claimant to go home for the day. Claimant was swearing at employer and wadded up her small check and threw it at employer. Claimant grabbed all of her items and left. Claimant told other coworkers she was quitting when she left.

Later in the evening claimant called and texted another co-owner of the business. During the call claimant reiterated her quitting of her employment. During the texts, claimant used multiple inappropriate words in expressing her frustration. She also stated that her actions, "cost me a job." Claimant additionally stated that she didn't think she could work there anymore.

Employer stated that if claimant's actions had not been seen by employer as a quit, that she would have been terminated for her inappropriate words, texts and actions towards the two owners.

Claimant has received state unemployment benefits in the amount of \$2,268.00.

It appears claimant has received \$3,600.00 in FPUC benefits.

Employer did substantially participate in fact finding in this matter by participating in the phone fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

In this matter claimant is disqualified from the receipt of benefits whether the case is examined as a quit or as a discharge.

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.

If this case is looked at as a quit, the administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was upset that employer questioned claimant hanging out with coworkers and griping such that it put rooms out of ratio. Additionally claimant was previously upset about being questioned regarding her days off for sickness of family members and claimant's chicken pox.

Ordinarily “good cause” is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O’Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). “The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith.” *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). “Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee’s quit in order to attribute the cause for the termination.” *Id.* Here, the claimant has not laid out good cause for her quit, other than being frustrated about all of the difficulties she was facing in her life. Claimant did not lay out specific reasons of things employer had done that claimant asked to be fixed that were not fixed prior to her quit.

If this matter is looked at as a termination for misconduct, claimant’s actions were sufficient to be terminated.

Iowa Code section 96.5(2)a provides:

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

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual’s employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual’s weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker’s contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer’s interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer

has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning respectfully treating superiors at work.

The last incident, which brought about the discharge, constitutes misconduct because claimant began by bad-mouthing her work and managers to her coworkers, stating she was sick of it and going to quit. When employer addressed claimant for being out of her assigned room, claimant got more upset and started using foul language and inappropriate actions to an owner. When employer had claimant go home for the day, she continued to berate the other owner, continuing on her foul language. Whereas the administrative law judge has compassion for the variety of difficulties claimant was addressing in her life, it appears that employer also showed their compassion for claimant on the date in question. Employer asked if claimant's desire to leave was because of a relative's death. Employer later allowed claimant to leave for the day. Yet claimant, for some reason, did not just walk away to find peace for a period and instead took her battle on to the other owner, swearing at her repeatedly and repeating her desire to quit. Employer was acting appropriately in terminating claimant for her words and actions. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, 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) (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 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.

The overpayment issue was addressed. Claimant has received state benefits in this matter of \$2,268.00. This is an overpayment.

It additionally appears that claimant has received \$3,600.00 in FPUC benefits. This matter will be remanded to the benefits bureau to determine whether this is an overpayment.

The issue of employer participation was addressed. As employer substantially participated in fact finding, employer’s account will not be charged for overpayments received by claimant.

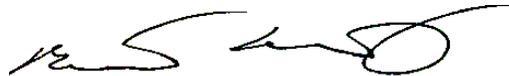
Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations 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>.

DECISION:

The decision of the representative dated March 31, 2020, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is otherwise eligible.

Claimant has received state benefits in this matter of \$2,268.00. This is an overpayment. As employer substantially participated in fact finding, employer’s account will not be charged for overpayments received by claimant.

This matter will be remanded to the benefits bureau to determine if claimant has been overpaid FPUC benefits in this matter.



Blair A. Bennett
Administrative Law Judge

August 10, 2020
Decision Dated and Mailed

bab/scn