

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEROLD T GIBSON
Claimant

LAWN JOCKEYS
Employer

APPEAL NO. 20A-UI-11792-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Respondent (2R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 17, 2020, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on July 3, 2020 for good cause attributable to the employer and based on detrimental working conditions. After due notice was issued, a hearing was held on November 17, 2020. Claimant Jerold Gibson did not provide a telephone number for the employer and did not participate. Wade Winters represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the claimant has been overpaid regular benefits.
Whether the claimant must repay overpaid regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC).
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jerold Gibson was employed by Lawn Jockeys as a lawn laborer from April 21, 2020 until June 26, 2020, when he voluntarily quit by discontinuing contact with the employer and by not appearing for further work. The employer continued to have work available for the claimant at the time he separated from the employment.

Mr. Gibson established an original claim for benefits that was effective July 19, 2020. At the time Mr. Gibson established his claim, he indicated that his unemployed status was caused by a labor dispute. Mr. Gibson's unemployed status was not caused by a labor dispute within the meaning of the law. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$254.00. Lawn Jockeys is not a base period employer. Mr. Gibson made weekly claims for the period of July 19, 2020 through November 14, 2020. Mr. Gibson received \$4,318.00 in regular benefits for the period of July 9, 2020 through November 14, 2020. Mr. Gibson received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week that ended July 25, 2020. Mr. Gibson received \$1,500.00 in Lost Wages Assistance (LWA) for the five weeks between July 26, 2020 and August 29, 2020.

On September 14, 2020, an Iowa Workforce Development Benefits Deputy held a fact-finding interview concerning Mr. Gibson's separation from the employer. On August 3, 2020, the employer had filed a protest that had included a telephone number where the business owner, Wade Winters, could be reached for the appeal hearing. At the time of the fact-finding interview, the deputy attempted to contact the employer, but used an erroneous telephone number in the IWD records, rather than the number the employer had provided in the August 3, 2020 protest. Accordingly, the employer did not have an opportunity to participate in the fact-finding interview. The claimant participated in the fact-finding interview and provided the following statement:

I am not part of a union that is on strike. I am currently laid off. The person that ran it, Wade (I can't remember his last name) called people names and I was getting tired of it. On July 3, 2020, I told him I can't work for someone who calls people names and he told me not to come back. I had no verbal or written warnings. I didn't know that my job was in jeopardy. I did my job to the best of my ability. We had other conversations periodically. A bunch of people walked off after he started calling names. I have not worked anywhere since Lawn Jockeys.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(21) and (22) 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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

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 Ct. 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.* In determining the facts, and deciding what testimony to believe, 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 employer's intentional misclassification of employees as independent contractors is a factor in determining the credibility and reliability of the employer's testimony.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant did not participate in the appeal hearing. The claimant presented no evidence to rebut the employer's testimony that the claimant voluntarily quit and presented no testimony to establish a voluntary quit for good cause attributable to the employer. The weight of the evidence in the record establishes that the claimant voluntarily left the employment for personal reasons. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant.

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. 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 base period 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 base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits, but this decision disqualifies the claimant for those benefits. The claimant, therefore, was overpaid \$4,318.00 in regular benefits for the period of July 9, 2020 through November 14, 2020. The employer did not participate in the fact-finding interview.

The employer took appropriate steps to provide a number for the fact-finding interview and was available for the fact-finding interview, but was not contacted for the fact-finding interview. Because the employer is not a base period employer for purposes of the claim, the employer's account cannot be charged for the overpaid benefits. See Iowa Code section 96.7(2) (regarding base period employer liability). The weight of the evidence fails to establish that the claimant knowingly and intentionally misrepresented material facts at the time of the fact-finding interview or that the claimant engaged in fraud to obtain unemployment insurance benefits. The claimant is not required to repay the \$4,318.00 in overpaid regular benefits. The overpaid regular benefits will be assessed to the unemployment compensation trust fund.

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

(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...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$600.00 in FPUC benefits the claimant received for the week that ended July 25, 2020 is an overpayment of benefits that the claimant must repay.

DECISION:

The September 17, 2020, reference 01, decision is reversed. The claimant voluntarily quit on June 26, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant is overpaid \$4,318.00 in regular benefits for the period of July 9, 2020 through November 14, 2020. The claimant is not required to repay the overpaid paid regular benefits. The overpaid benefits will be assessed to the unemployment compensation trust fund. The claimant is overpaid \$600.00 in FPUC benefits for the week that ended July 25, 2020 and must repay the FPUC benefits.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision regarding the \$1,500.00 in Lost Wages Assistance (LWA) the claimant received for the five weeks between July 26, 2020 and August 29, 2020.

This matter is **remanded** to the Benefits Bureau for determination of whether the claimant has been available for work since he established his claim for benefits.

This matter is **remanded** to the Misclassification Unit for investigation of the employer's classification of employees as independent contractors for tax purposes.



James E. Timberland
Administrative Law Judge

November 24, 2020
Decision Dated and Mailed

jet/mh

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.

If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay benefits you have received.**