

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE M HILL
Claimant

APPEAL 21A-UI-07382-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

**OC: 01/17/21
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Walmart Inc the employer/appellant, filed an appeal from the March 2, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 21, 2021. The employer participated through Jodi Wilson. Ms. Hill participated and testified. Official notice was taken of the administrative record. Employer's Exhibit 1 was admitted into evidence.

ISSUE:

Was Ms. Hill discharged for disqualifying job-related misconduct?
Was Ms. Hill overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hill began working for the employer on August 1, 2020. She worked as a full-time associate. The employer terminated her employment on January 21, 2021.

The employer's policy provides that employees who have five or more points in a rolling-six month period are subject to termination of their employment. An employee who misses more than 50 percent of a shift gets one point. An employee who clocks in 10 minutes before their shift starts or earlier gets 0.5 points. An employee who clocks out 10 minutes before shift ends or earlier but does not miss more than 50 percent of their shift gets 0.5 points. Employees can see their points at any time on the employer's app.

In the last four months of her employment, Ms. Hill got a total of 6.5 points. She got 5.5 points (0.5 points for each day) for clocking in early on October 6, October 29, October 30, November

10, December 28, December 29, January 7, January 8, January 11, January 15 and January 18. She also got 1 point (0.5 for each day) for clocking out early on January 7 and January 8.

Initially, Ms. Hill did not understand the early clock in policy. After she received her first 0.5 points for clocking early, Ms. Hill asked Ms. Wilson why she was docked points. Ms. Wilson explained the policy to Ms. Hill and removed the 0.5 points. Ms. Wilson warned Ms. Hill that if she clocked in early again she would get points. Another manager separately explained to Ms. Hill that she would get 0.5 points each time she clocked in early.

Ms. Hill has received \$5,725.00 in REGULAR unemployment insurance (UI) benefits between January 17, 2021 and May 22, 2021. Ms. Hill received \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits between January 17, 2021 and May 8, 2021.

The administrative record shows Iowa Workforce Development contacted the employer on February 4, 8 and 10, 2021 but the employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Hill was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Hill continued to clock in early after having been warned to not clock in early by Ms. Wilson and another manager. Despite these warnings, Ms. Hill continued to clock in early. This is disqualifying misconduct. Benefits are denied.

The administrative law judge further concludes Ms. Hill has been overpaid REGULAR UI benefits in the amount of \$5,725.00 but these benefits should not be repaid. The administrative law judge also concludes that Ms. Hill has been overpaid FPUC benefits in the amount of \$5,400.00.

Iowa Code §96.3(7) provides, in pertinent part:

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.

(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.

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 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 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.

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...

Ms. Hill has been overpaid REGULAR UI benefits in the amount of \$5,725.00 as she was not qualified and/or was ineligible to receive REGULAR UI benefits. Since the employer had the opportunity to but did not participate in the fact-finding interview, Ms. Hill is not required to repay the \$5,725.00 in REGULAR UI benefits she received.

Because Hill is disqualified from receiving regular UI benefits, she is also disqualified from receiving FPUC benefits. While Iowa law does not require a claimant to repay regular UI benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC benefits. Therefore, the determination of whether Ms. Hill must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that Ms. Hill has been overpaid FPUC benefits in the gross amount of \$5,400.00, which should be repaid.

DECISION:

The March 2, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Hill was discharged from employment due to job-related misconduct. 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. Ms. Hill has been overpaid REGULAR UI benefits in the amount of \$5,725.00. Ms. Hill is not required to repay the REGULAR UI benefits. Ms. Hill has been overpaid FPUC benefits in the amount of \$5,400.00, which must be repaid.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

June 7, 2021

Decision Dated and Mailed

dz/kmj

NOTE TO CLAIMANT:

- This decision determines you have been overpaid FPUC 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.
- **You may also request a waiver of this overpayment either 1) online, OR 2) in writing by mail.**
- The **online request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written request** must include the following information:
 1. Claimant name & address.
 2. Decision number/date of decision.
 3. Dollar amount of overpayment requested for waiver.
 4. Relevant facts that you feel would justify a waiver.

- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319

- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.