

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSEMARIE RIVERS
Claimant

FBG SERVICE CORPORATION
Employer

APPEAL 25A-UI-01744-B2-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/02/25
Claimant: Respondent (2)**

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 21, 2025, (reference 01) which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 18, 2025. Claimant participated. Employer participated by Angela Jolly. Employer's Exhibits 1-5 were admitted into evidence.

ISSUES:

Whether claimant voluntarily quit with 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 put in a notice to voluntarily quit for employment (retirement) on December 27, 2024. Claimant filed an original claim in this matter on February 2, 2025. Claimant last worked for employer on November 14, 2024. Employer discharged claimant on November 27, 2024 after claimant was a no call / no show for work for three consecutive days. Employer had been keeping in contact with claimant and knew claimant had been sick the week prior. Employer indicated that they believed claimant was in the hospital and that was why she didn't respond to calls or the text sent.

Claimant stated her supervisor told her that she didn't need to worry about contacting employer.

Claimant stated that she was not able and available to work at any time between her last day of work on November 14, 2024 and the date of her voluntary retirement on December 27, 2024.

Claimant has received unemployment benefits in the amount of \$2,528.00.

Employer did substantially participate in fact finding in this matter by providing a witness for the fact finding with information surrounding the job separation.

REASONING AND CONCLUSIONS OF LAW:

The claimant filed for unemployment benefits effective February 2, 2025. If claimant were to be eligible to receive benefits, she could not receive any benefits as she had not filed as of yet. Therefore, the judge must look at this matter as of three dates – the date of November 24, 2024 (when the claimant was terminated from her job), the date of December 27, 2024 (when the claimant was to retire) and the date of February 2, 2025 (when claimant filed her original claim.).

The claimant put in an accepted resignation as of December 27, 2024. Therefore, as of December 27, 2024 the claimant is not entitled to benefits as the claimant had voluntarily quit. The claimant may have been eligible for benefits between the date of her termination of November 27, 2024 and December 27, 2024, but both of these dates come before the claimant filed for benefits on February 2, 2025, and therefore are not relevant to the decision.

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 Code section 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. 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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

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 wished to retire.

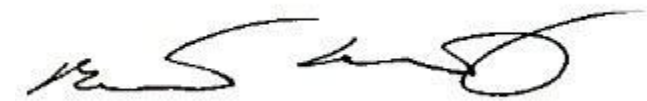
The overpayment issue was addressed. The claimant is overpaid \$2,528.00 in unemployment benefits.

The issue of employer participation was addressed. Employer did substantially participate in fact finding as employer provided a witness with specific knowledge of the situation for fact finding.

DECISION:

The decision of the representative dated February 21, 2025, (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.

The claimant has been overpaid \$2,528.00 in regular unemployment insurance benefits, and she is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall be charged.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections, Appeals & Licensing

April 3, 2025
Decision Dated and Mailed

bab/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.