

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TERRESHA YOUNG**  
Claimant

**CHILDREN AND FAMILIES OF IOWA**  
Employer

**APPEAL 21A-UI-03316-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/08/20  
Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
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 January 19, 2021, Children and Families of Iowa (employer/appellant) filed an appeal from the January 12, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on October 27, 2020 without a showing of misconduct.

A telephone hearing was held on April 21, 2021. The parties were properly notified of the hearing. Terresha Young (claimant/respondent) participated personally. Employer participated by CHRO Sharon Haning. Program Manager Casey Kelly participated as a witness for employer. Claimant listed a witness for the hearing but the witness was not available at the time of hearing at the number provided and so did not participate.

A hearing was initially set for March 23, 2021. At that time, claimant requested a continuance in order to submit proposed exhibits and secure witnesses. Claimant was advised at that time to closely review the hearing notice and that she must submit any proposed exhibits to the both the appeals bureau and the opposing party prior to the date of the continued hearing. Claimant submitted documents to the appeals bureau but not to the opposing party as required. Those documents were therefore not admitted into evidence.

Employer's Exhibits 1-3 were admitted into evidence. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was October 27 or 28, 2009. The last day claimant worked on the job was October 27, 2020. Claimant was employed at that time as a full-time assistant teacher. In this position, claimant cared for children with special needs. Claimant's immediate supervisors were Kelly and Samantha Harms.

Claimant submitted a notice of resignation to employer dated October 23, 2020. Claimant wrote in the notice that she was resigning to accept a position with another employer. Claimant gave two weeks' notice at that time. The resignation became effective November 6, 2020. Claimant was paid through that date.

Claimant did accept another position prior to resigning. However, she did not end up performing work in that position. She instead took another position with a laundromat beginning in late-December 2020. She subsequently left that position and began another position on January 19, 2021. She remains in that position to date.

Claimant resigned in part because she wished to have a higher rate of pay. She shared this reason with employer, who interviewed her for a position with a higher rate of pay on October 22, 2020. Employer offered to assist claimant in getting the necessary certification for the position for which she was interviewing. However, claimant expressed that she was unsure she could take the position due to the hours differing from her current position. Employer advised claimant to think about it and let them know. She submitted her notice of resignation the following day before a decision had been made on who would fill the position claimant interviewed for. The position claimant interviewed for remains open, and there was continued work available for claimant if she had not resigned.

Claimant also resigned in part due to concerns with Harms. She had on several occasions raised informal concerns with Haning about communication issues with Harms as well as concerns about the safety of the children she cared for and the stress of her position. Claimant at times felt disrespected by Harms and also felt she needed additional help with caring for the children, some of whom had serious behavioral issues. These concerns in part prompted employer's suggestion that claimant interview for the new position. Of note, during that interview, claimant and Harms had a heated exchange and Harms left the room.

Claimant filed weekly claims for benefits from the benefit week ending November 14, 2020 through the benefit week ending January 16, 2021. The unemployment insurance system shows the total amount of benefits paid during that period is \$3,388.00.

Haning responded to a request for further information from the department by providing a written statement and completing the fact-finding questionnaire. Haning stated at that time that claimant had indicated she was resigning to take another position.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the January 12, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on October 27, 2020 without a showing of misconduct is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

- a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

- (3)** The claimant left to seek other employment but did not secure employment.
- (13)** The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.
- (21)** The claimant left because of dissatisfaction with the work environment.
- (22)** The claimant left because of a personality conflict with the supervisor.
- (38)** Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The administrative law judge finds employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant is therefore disqualified from benefits from the date the resignation became effective and continuing until she earns wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant resigned for another position but did not perform work in that position. She resigned in part because of a dissatisfaction with her wages; a dissatisfaction with the work environment; and a personality conflict with Harms. These reasons are presumed to be without good cause attributable to employer and the administrative law judge finds they were without good cause here. The administrative law judge further finds that a reasonable person would not have found the working conditions so intolerable or detrimental as to justify resignation, particularly where employer was actively considering elevating claimant to another position which would apparently have addressed many of the issues which led to the resignation.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

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.

(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 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.

Claimant filed weekly claims for benefits from the benefit week ending November 14, 2020 through the benefit week ending January 16, 2021. The unemployment insurance system shows the total amount of benefits paid during that period is \$3,388.00. Because the administrative law judge now finds claimant disqualified from benefits from the date of separation, November 6, 2020, she has been overpaid benefits in that amount.

Employer did participate in the fact-finding process within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. Benefits shall therefore be recovered from claimant; 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.

**DECISION:**

The January 12, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on October 27, 2020 without a showing of misconduct is REVERSED. Claimant's resignation was without good cause attributable to employer. Claimant is therefore disqualified from benefits from the date the resignation became effective and continuing until she earns wages equal to ten times her weekly benefit amount, provided is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$3,388.00. Benefits shall be recovered from claimant; 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.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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1000 East Grand Avenue  
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Fax (515) 478-3528

April 26, 2021  
Decision Dated and Mailed

abd/scn

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.