

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA M MANGRICH
Claimant

SHELTER HOUSE COMMUNITY SHELTER
Employer

APPEAL 20A-UI-03882-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
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 May 8, 2020, Shelter House Community Shelter (employer/appellant) filed an appeal from the April 29, 2020 (reference 01) unemployment insurance decision that determined Laura Mangrich (claimant/respondent) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on May 28, 2020. The parties were properly notified of the hearing. Employer was represented by General Counsel and Operations Director Catherine Gerlach. Participating as witnesses for employer were Housing Services Director Erin Sullivan and Associate Executive Director Mark Sertterh. Claimant participated personally.

Employer's Exhibits 1-9 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?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time lead night coordinator. In this position, claimant worked as the "point person" for tenants of a permanent supportive housing unit for approximately 24 chronically homeless individuals. Her job duties included assisting tenants with questions and

concerns, developing professional relationships with them, providing them informal counseling and information about resources, and so on. Claimant's first day of employment was September 30, 2019. The last day claimant worked on the job was March 19, 2020. Claimant's immediate supervisor was Sullivan. Claimant worked several overnight shifts each week, from 9 p.m. to 7 a.m.

Claimant resigned on March 6, 2020, effective March 19. Claimant quit due to a dissatisfaction with the work environment. No final incident led to her resignation. Rather, it was the result of a number of incidents and concerns. See Exhibits 6, 7.

Claimant generally felt unsafe in the position. Claimant was typically the only person working during the overnight hours. On several occasions during her shift, claimant had to contact the police for assistance with tenants. Claimant wished for a way to discretely contact law enforcement in the event of an issue with a tenant, such as a "panic button," as she worried that a tenant seeing her calling law enforcement during a conflict would escalate the situation and put her in danger. Claimant did mention this request to a prior supervisor, but not to Sullivan. Claimant sat at a desk while working and so had little physical protection from a would-be assailant.

Claimant also felt harassed by reports that tenants and their guests had made about her, suggesting she was using drugs or having inappropriate relationships with tenants. Two tenants in particular were particularly problematic and would spend long hours at the desk with claimant. One made vague verbal threats about claimant being a federal agent and knowing what she was up to. Another had demanded to know who had called the police earlier in the evening. Tenants also sometimes made inappropriate sex-based comments, but claimant generally felt comfortable addressing that. Finally, claimant found maintaining the overnight hours to be difficult.

Claimant knew at the time of her hire that many of the tenants had traumatic brain injuries, mental health diagnoses, and substance abuse issues, and so it was not uncommon for them to behave erratically and sometimes aggressively. Tenants had in the past been arrested where police were called. Notably, claimant was never assaulted or specifically threatened with assault by a tenant. See Exhibits 1, 2.

Claimant had expressed concern to Sullivan on several occasions about her safety and about specific incidents with tenants. Sullivan was responsive to these concerns and invited claimant to call her personal cell phone at any time. She also instructed claimant to never hesitate to contact the police. Sullivan also offered claimant further training on establishing healthy boundaries with the tenants. After learning of incidents where tenants behaved inappropriately with claimant, Sullivan would instruct those tenants' case managers to address those issues with them. Since the goal of the program is to help chronically homeless individuals maintain housing, eviction of problematic tenants was a last resort. See Exhibit 9.

Claimant was provided training on interacting with individuals with brain injuries and had access to tenants' logs to see what their diagnoses were. She also had access to tenants' case managers and social workers. Claimant did not elevate any of her concerns past Sullivan, as set forth in the employee handbook. Claimant knew Sertterh was Sullivan's supervisor, as she had discussed some concerns with him in January when Sullivan was unavailable. Claimant requested different hours so she would not be working overnight. Employer offered claimant daytime hours that were available, but those were not full-time hours. Claimant declined that offer. See Exhibit 3.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$452.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 16, 2020, not including the week of April 18, 2020. That

week claimant received benefits in the amount of \$291.00. The total amount of benefits paid to date is \$3,003.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of seven weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 16, 2020. The total amount of FPUC benefits paid to date is \$4,200.00.

Gerlach and Sullivan participated in the fact-finding interview on behalf of employer. At that time, employer stated claimant had resigned after bringing safety issues to Sullivan in February and being offered further training at that time. Employer noted it was unaware of any request for a "panic button" or similar device.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 29, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is REVERSED. Claimant is disqualified from receiving benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

- 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.

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:

- (21) The claimant left because of dissatisfaction with the work environment.

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 the behavior claimant was subjected to here must be analyzed through a different lens than similar behavior in a typical working environment. While the administrative law judge has no doubt that the working environment was challenging and stressful, a reasonable person in claimant's position would not find the conditions to be so intolerable or detrimental as to necessitate quitting. As such, claimant's quitting was without good cause attributable to employer and benefits must be denied.

The administrative law judge reaches this conclusion for several reasons. First, claimant was aware of the nature of the employment and the working conditions at the time of her hire. There was no sudden change in circumstances or final event or incident which lead to the resignation. Second, and relatedly, claimant knew she was working with individuals with significant impairments that would likely lead to erratic and sometimes aggressive behavior. Claimant was trained on how to respond to difficult behavior and was provided numerous resources, including being encouraged to contact police whenever she felt it necessary. Third, while claimant understandably felt uncomfortable in the position, she was never assaulted or specifically threatened. A reasonable person in claimant's position would take the inappropriate comments, vague threats, and spurious complaints made by tenants with a grain of salt, given the diminished capacity of the individuals making them. Fourth, employer responded to claimant's concerns in a timely and reasonable manner, including by offering further training and by making sure tenants' case managers addressed their behaviors with them. Employer even offered claimant daytime hours that were available, which claimant declined. Employer was not specifically aware of the request for a "panic button" but, as noted above, did encourage claimant to call Sullivan and/or the police at any time. Finally, it is inconsistent for claimant to claim the conditions were so intolerable or detrimental as to justify quitting, but then continue working for approximately two weeks after giving notice of resignation.

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. The administrative law judge finds claimant quit due to dissatisfaction with the work environment. This reason for quitting is presumed to be without good cause, and it was without good cause in this instance. As such, benefits must be denied.

- 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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$452.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 16, 2020, not including the week of April 18, 2020. That week claimant received benefits in the amount of \$291.00. The total amount of benefits paid to date is \$3,003.00.

Gerlach and Sullivan participated in the fact-finding interview on behalf of employer. At that time, employer stated claimant had resigned after bringing safety issues to Sullivan in February and being offered further training at that time. Employer noted it was unaware of any request for a "panic button" or similar device.

Because employer did participate in the fact-finding interview 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 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.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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...

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of seven weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 16, 2020. The total amount of FPUC benefits paid to date is \$4,200.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$4,200.00. Claimant is required to repay those benefits.

DECISION:

The April 29, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant is disqualified from receiving benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$3,003.00. 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.

Claimant has been overpaid FPUC benefits in the amount of \$4,200.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 12, 2020
Decision Dated and Mailed

abd/mh

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 but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.