

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

CRYSTAL HAMMAN
Claimant

APPEAL 24A-UI-07306-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SENIOR HOUSING HEALTH CARE INC
Employer

**OC: 07/14/24
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Senior Housing Health Care Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) August 8, 2024 (reference 02) unemployment insurance (UI) decision. IWD found Ms. Hamman eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed her from employment on July 17, 2024 for a reason that did not disqualify her from receiving UI benefits. On August 16, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Hamman for a telephone hearing scheduled for September 4, 2024.

The administrative law judge held a telephone hearing on September 4, 2024. The employer participated in the hearing through Wyatt Holst, community director, Julie Laxton, human resources manager/hearing representative, and Amber Shumway, regional director of operations. Ms. Hamman did not participate in the hearing. The administrative law judge admitted Department's Exhibits 1-2 and Employer's Exhibits 1-2 as evidence.

The administrative law judge concludes Ms. Hamman is not eligible for REGULAR (state) UI benefits based on how her job ended with this employer, IWD overpaid her \$1,806.00 in REGULAR (state) UI benefits, and she is required to repay these benefits back to IWD.

ISSUES:

Did the employer discharge Ms. Hamman from employment for disqualifying job-related misconduct?

Did IWD overpay Ms. Hamman REGULAR (state) UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Hamman began working for the employer in November 2023. She worked as a full-time healthcare

¹ Appellant is the person or employer who appealed.

coordinator at the employer's RiverView Ridge facility in Rock Valley, Iowa. Her employment ended on July 22, 2024.

Ms. Hamman was scheduled to work July 18, 19 and 22. She did not attend work or call-in. Ms. Hamman left her work computer, work phone and keys at work on July 17 even though she was scheduled to be on call 24/7. The employer tried to contact Ms. Hamman and her emergency contact. Neither responded. The employer's policy provides that the employer will consider an employee to have abandoned their job if the employee is a No-Call/No-Show for three consecutive shifts. Ms. Hamman acknowledged receiving a copy of the policy on, or about, her hire date. On July 22, the employer sent Ms. Hamman a letter accepting her voluntary resignation.

IWD paid Ms. Hamman \$1,806.00 in REGULAR (state) UI benefits for 3 weeks between August 4, 2024 and August 24, 2024. The employer participated in the fact-finding interview via a letter and attachments explaining that Ms. Hamman had quit as of July 22 by abandoning her job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 1) Ms. Hamman's separation from employment on July 22, 2024 was without good cause attributable to the employer, 2) IWD overpaid Ms. Hamman \$1,806.00 in REGULAR (state) UI benefits, and 3) Ms. Hamman is required to repay these benefits back to IWD.

Ms. Hamman Voluntarily Quit As of July 22, 2024,
So She is Not Eligible for REGULAR (State) UI Benefits

An individual shall be disqualified for benefits:

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(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In general, the employer has the burden to prove that a claimant is disqualified from receiving UI benefits.² But, the claimant has the burden of proving that a voluntary leaving was for good

² Iowa Code § 96.6(2).

cause attributable to the employer.³ A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.⁴ “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.⁵

In this case, Ms. Hamman did not participate in the hearing to explain what was happening. Ms. Hamman presumably did what was best for her, but her leaving was not for a good-cause reason attributable to the employer according to Iowa law. So, Ms. Hamman is not eligible for REGULAR (state) UI benefits.

IWD Overpay Ms. Hamman \$1,806.00 in REGULAR (State) UI Benefits,
And She is Required to Repay These Benefits Back to IWD.

Iowa Code §96.3(7) provides, in relevant 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.

(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, in relevant part:

Employer and employer representative participation in fact-finding interviews.

³ *Id.*

⁴ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁵ *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

(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.

Since Ms. Hamman is not eligible for REGULAR (state) UI benefits based on how her job ended with the employer, she is not eligible for the UI benefits IWD already sent her. IWD overpaid Ms. Hamman \$1,806.00 in REGULAR (state) UI benefits for three weeks between August 4, 2024 and August 24, 2024. Since the employer participated in the fact-finding interview, Ms. Hamman is required to repay these benefits back to IWD.

DECISION:

The August 8, 2024, (reference 02) UI decision is REVERSED. Ms. Hamman voluntarily left her employment as of July 22, 2024 without good cause attributable to the employer. Ms. Hamman is not eligible for REGULAR (state) UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

IWD overpaid Ms. Hamman \$1,806.00 in REGULAR (state) UI benefits for three weeks between August 4, 2024 and August 24, 2024. Since the employer participated in the fact-finding interview, Ms. Hamman is required to repay these UI benefits back to IWD.



Daniel Zeno
Administrative Law Judge

September 6, 2024
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with this 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.

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 then file a petition for judicial review in district court.

2. If no one files 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 Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.

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 nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.