

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SAMANTHA J YONKOVIC
Claimant

APPEAL 22A-UI-19648-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BULL MOOSE HEAVY HAUL INC
Employer

**OC: 11/13/22
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

Bull Moose Heavy Haul, Inc., the employer/appellant, filed an appeal from the Iowa Workforce Development (IWD) December 7, 2022 (reference 01) unemployment insurance (UI) decision. The decision allowed REGULAR (state) UI benefits because IWD concluded that Ms. Yonkovic quit working for this employer on November 15, 2022 because working conditions were detrimental to her. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to the employer and Ms. Yonkovic. A telephone hearing was held on January 6, 2023. The employer participated through Eric Branson, director of human resources (HR), Travis Olson, production manager, and Christa Kalb, HR manager. Ms. Yonkovic did not participate in the hearing. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUES:

Did Ms. Yonkovic voluntarily quit without good cause attributable to the employer?
Was Ms. Yonkovic overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Yonkovic began working for the employer on September 9, 2021. She worked as a full-time painter. Her employment ended on November 15, 2022.

On November 15, 2022, Ms. Yonkovic gave the employer a written notice of her intention to resign on November 25, 2022. Ms. Yonkovic cited work culture, lack of accountability and favoritism as her reasons for leaving. Ms. Yonkovic stated that she would be entering self-employment after quitting. The employer accepted Ms. Yonkovic's resignation and ended her employment that day.

Before submitting her resignation, Ms. Yonkovic had complained to the employer about the issues she listed in her resignation notice. The employer concluded that Ms. Yonkovic was upset because she wanted to be team lead and she did not want the employer to hire a person that she did not like. Ms. Yonkovic did not participate in the hearing to provide details about why she resigned or about her self-employment after resigning.

Ms. Yonkovic has received \$1,248.00 in REGULAR (state) UI benefits between November 13, 2022 and November 26, 2022. Ms. Yonkovic has not otherwise received UI benefits on her claim. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Yonkovic separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

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(37) and (38) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

(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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.¹ A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.² “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.³

In this case, Ms. Yonkovic giving the employer her resignation notice on November 15, 2022 showed her intention to quit and was an overt act carrying out that intention. The employer accepted the resignation, but instead of agreeing to Ms. Yonkovic's proposed last day as November 25 the employer ended her employment on November 15. Ms. Yonkovic did what was best for her, but her quitting was without good cause attributable to the employer.

Since the employer ended Ms. Yonkovic's employment on November 15, the day she gave the employer her resignation notice, Ms. Yonkovic is eligible for UI benefits from November 15, 2022 through November 25, 2022, her proposed last day. UI benefits are denied as of the following week, November 27, 2022.

Since Ms. Yonkovic is eligible for UI benefits from November 15, 2022 through November 25, 2022, the issues of overpayment and repayment are moot during this time. Since Ms. Yonkovic has not received UI benefits during any other weeks, the issues of overpayment and repayment are moot as of November 27, 2022. Ms. Yonkovic is not required to repay any UI benefits she has already received.

DECISION:

The December 7, 2022, (reference 01) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, Ms. Yonkovic. Ms. Yonkovic voluntarily left her employment without good cause attributable to the employer, but the employer ended Ms. Yonkovic's employment before her proposed resignation date. Benefits are allowed from November 15, 2022 through November 25, 2022, as long as no other UI decision denies Ms. Yonkovic benefits. Benefits are denied as of November 27, 2022 until such time as Ms. Yonkovic has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

¹ Iowa Code § 96.6(2).

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

³ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Since Ms. Yonkovic is eligible for UI benefits from November 15, 2022 through November 25, 2022, and since she has not received UI benefits during any other weeks, the issues of overpayment and repayment are moot. Ms. Yonkovic is not required to repay any UI benefits she has already received.



Daniel Zeno
Administrative Law Judge

January 10, 2023
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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.