

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CARLOS M ARAUJO**  
Claimant

**APPEAL 21A-UI-17497-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 05/23/21  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Menard Inc., the employer/appellant, filed an appeal from the July 29, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 30, 2021. The employer participated through Emily Conklin, human resources coordinator and Melanie Forry, assistant general manager. The employer was represented by Paul J Hammell, attorney. Mr. Araujo did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was Mr. Araujo discharged for disqualifying job-related misconduct, or did he voluntarily quit without good cause attributable to the employer?  
Was Mr. Araujo overpaid benefits?  
If so, should he repay the benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Araujo began working for the employer on August 19, 2020. He worked as a full-time general laborer. His employment ended on May 27, 2021.

On May 27, Ms. Forry asked Mr. Araujo to clean the bathroom. The person who usually cleaned the bathrooms was on Family Medical Leave Act (FMLA) leave. The employer had previously discussed with employees that employees and managers would help the office manager clean the bathrooms while the custodial staff was on FMLA leave. The employer put together a list of the employees and managers names. On the first day, the first person on the list of names helped the office manager clean the bathroom. Each day after, the next person on the list of names would help the office manager clean the bathroom.

When Ms. Forry asked Mr. Araujo to clean the bathroom, he told her that he did not think that he should have to do so. Ms. Forry explained that all employees and managers were sharing the responsibility of cleaning the bathroom. Mr. Araujo then cleaned the bathroom.

Mr. Araujo contacted Ms. Conklin three times that day. He told Ms. Conklin that Ms. Forry had told him to clean the bathroom and he did not like that. On the third call, Mr. Araujo told Ms. Conklin that he was not coming back to work. Mr. Araujo left for lunch and did not return to work. Ms. Conklin told the site manager and Ms. Forry that Mr. Araujo would not be returning. Mr. Araujo never returned to work.

Prior to May 27, Mr. Araujo had made no complaints about the work environment or anyone at work to human resources staff, or management at the site at which he worked.

Mr. Araujo has received \$447.00 in REGULAR unemployment insurance (UI) benefits between May 23, 2021 and June 5, 2021. Mr. Araujo received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits from the week ending June 5, 2021.

The employer did not participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes Mr. Araujo's 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(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:

(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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(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. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

In this case, Mr. Araujo voluntarily quit when he told Ms. Conklin that he would be returning to work, and then he did not return to work. The evidence establishes that Mr. Araujo quit because he did not like that he had to clean the bathroom. Mr. Araujo did not participate in the hearing, and provided no other reason(s) for why he quit. Mr. Araujo's leaving was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The administrative law judge further concludes Mr. Araujo has been overpaid REGULAR UI benefits in the amount of \$447.00, and he has been overpaid FPUC benefits in the amount of \$600.00.

Iowa Code §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 un rebutted 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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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...

Mr. Araujo has been overpaid REGULAR UI benefits in the amount of \$447.00.00 as he is not qualified and/or is ineligible to receive REGULAR UI benefits. Since the employer did not participate in the fact-finding interview, Mr. Araujo is not required to repay these benefits.

Because Mr. Araujo is disqualified from receiving regular UI benefits, he is also disqualified from receiving FPUC benefits. While Iowa law does not require a claimant to repay regular UI benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC benefits. Therefore, the determination of whether Mr. Araujo must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that Mr. Araujo has been overpaid FPUC benefits in the gross amount of \$600.00, which must be repaid.

#### **DECISION:**

The July 29, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Araujo voluntarily left employment without good cause attributable to the employer. Benefits are denied until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Mr. Araujo has been overpaid REGULAR UI benefits in the amount of \$447.00. The employer did not participate in the fact-finding interview, so Mr. Araujo is not required to repay these benefits.

Mr. Araujo was overpaid FPUC benefits in the amount of \$600.00, which must be repaid.



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October 4, 2021  
Decision Dated and Mailed

dz/scn