

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEJANDRO AGUILAR
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 21A-UI-15829-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Respondent (2)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 13, 2021 (reference 01) unemployment insurance decision that allowed benefits to the claimant based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2021. The claimant did not participate. The employer, Advance Services Inc., participated through witness Melissa Lewien. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?
Is the claimant overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of this temporary employment firm. On May 21, 2019, the claimant had completed paperwork with the employer, including signing the employer's assignment policy. See Ex 1. He received a copy of the policy. This policy was separate from his contract of hire. The policy required him to request additional work within three working days of a job assignment ending. See Ex 1.

Claimant received his job assignment from the employer to work at Syengena Seed. He worked as an agricultural laborer. Claimant began his assignment on September 8, 2020 and worked until October 23, 2020. Syengena Seed notified the claimant that the job assignment had ended effective October 23, 2020. The claimant did not request any additional job assignments from this employer. There was continuing work assignments available to the claimant.

The claimant's administrative records indicate that he has received unemployment insurance benefits funds by the State of Iowa in the amount of \$2,700.81 from March 21, 2021 and through June 12, 2021. The claimant also received FPUC benefits in the amount of \$3,600.00 for the twelve weeks between March 21, 2021 and June 12, 2021. No fact-finding interview via telephone was scheduled or conducted by Iowa Workforce Development regarding the claimant's separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment

assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment and who seeks reassignment." In this case the claimant never requested any additional job assignments within three working days after the notification of the end of the assignment. There was continuing work available. As such, the separation is disqualifying. Benefits are denied effective the original claim date of March 21, 2021. Because benefits are denied, the issues of overpayment and chargeability must be addressed.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

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.

(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.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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.

(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.

Because the claimant’s separation was disqualifying, benefits were paid after his separation from employment which he was not entitled to. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7).

The administrative law judge finds that the employer was not properly contacted nor given the opportunity to participate in a fact-finding interview. Pursuant to Iowa Code § 96.3(7) and Iowa Admin. Code r. 871-24.10, the law states that an employer is to be charged if “the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits.” Iowa Code § 96.3(7)(b)(1)(a). In this case, the employer was never telephoned to participate in an interview. Benefits were not allowed because the employer failed to respond timely or adequately to IWD’s request for information relating to the payment of benefits. Instead, benefits were allowed because the employer did not receive any telephone call to participate in any fact-finding interview. Given these facts, the employer’s account shall not be charged for benefits paid and the claimant is not required to repay the regular unemployment insurance benefits received. Any charges for this claim should be absorbed by the fund.

The next issue is whether the claimant is overpaid FPUC benefits. The administrative law judge finds that he is.

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...

In this case, the claimant received FPUC benefits but was not eligible for those benefits. This was because his separation from employment with this employer was found to be disqualifying. As such, the claimant is overpaid FPUC benefits in the amount of \$3,600.00 for the twelve weeks between March 21, 2021 and June 12, 2021. Those benefits must be repaid to the agency by the claimant, unless a waiver is requested and granted.

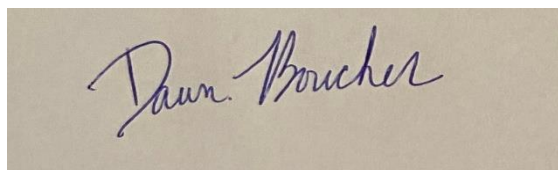
Pursuant to PL 116-136 Section 2104(F)(2) of the CARES Act, the claimant may request a waiver of the overpayment of FPUC benefits. The request for waiver should be sent to:

Iowa Workforce Development
Overpayment Waiver Request
1000 East Grand Avenue
Des Moines, Iowa 50319

The request for waiver of overpayment should include the claimant's name, address, decision number and date of decision, dollar amount of overpayment requested for waiver, and all relevant facts the claimant feels would justify a waiver of the overpayment balance. The claimant may also visit <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>.

DECISION:

The July 13, 2021 (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment on October 23, 2020 was disqualifying. Unemployment insurance benefits funded by the State of Iowa are denied effective March 21, 2021 and continuing until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after his October 23, 2020 separation date, and provided he is otherwise eligible. The claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$2,700.81 from March 21, 2021 and through June 12, 2021, but is not obligated to repay the agency those benefits he received because the employer did participate in the fact-finding interview. Further, the employer's account may not be charged for those benefits paid as it was not provided an opportunity to participate in a fact-finding interview. The claimant has been overpaid FPUC benefits in the amount of \$3,600.00 for the twelve weeks between March 21, 2021 and June 12, 2021. Those FPUC benefits must be repaid to the agency by the claimant, unless a waiver is requested and granted.



Dawn Boucher
Administrative Law Judge

September 14, 2021
Decision Dated and Mailed

db/mh