

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA J NELSON
Claimant

TRIPLE J RANCH, INC.
Employer

APPEAL 21A-UI-08851-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
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:

Triple J Ranch, Inc. (employer/appellant) filed an appeal from the April 12, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on January 25, 2021 without a showing of misconduct.

A telephone hearing was held on June 14, 2021. The parties were properly notified of the hearing. Employer participated by Operating Partner Dustin Jentz. Lisa Nelson (claimant/respondent) did not register a number for the hearing or participate.

Employer's Exhibits 1 and 2 were admitted. 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 or should employer be charged 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 part-time delivery driver. Claimant's first day of employment was July 24, 2020. The last day claimant worked on the job was January 25, 2021. Claimant's immediate supervisor was Jentz. Claimant's schedule fluctuated. Claimant voluntary quit on January 27, 2021.

Claimant was scheduled to work on January 26 and 27, 2021. Claimant did not appear for work or call in to report her absences on those dates, despite being aware that she was scheduled to work on those days. This was because claimant was upset about an issue with the timeclock system that had clocked her out automatically on certain days. Jentz offered to work with claimant to get this issue corrected but she did not want to do so. She instead stopped appearing for work.

Claimant called Jentz on or about January 28, 2021 to request to return to work. Jentz declined to return her to work due to the two consecutive no-call, no-show absences. Employer has a written policy providing that two consecutive no-call, no-show absences will be considered a voluntary resignation. Claimant received a copy of this policy at the time of hire.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$181.00 for a total of 11 weeks, from the benefit week ending March 20, 2021 through the benefit week ending May 29, 2021. The total amount of benefits paid to date is \$1,991.00.

Claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$300.00 for a total of 11 weeks, from the benefit week ending March 20, 2021 and continuing through the benefit week ending May 29, 2021. The total amount of FPUC paid is \$3,300.00.

Jentz received a letter from the department requesting information regarding the separation. Jentz responded to that letter within a day of receiving it in the mail; he called and left a message with the department but never got a call back.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 12, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on January 25, 2021 without a showing of misconduct is REVERSED.

- 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. But the individual shall not be disqualified if the department finds that:

- g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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).

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.

Claimant was intentionally absent without notice for two days in a row in violation of company rule. Claimant did not appear for work because she was upset about an issue with the time clock. While claimant's frustration is understandable, employer offered to work with her to correct these issues. Instead of taking employer up on this offer and continuing to work, claimant chose to stop appearing for work when there was still work available. A reasonable person would not have found the working conditions so interoperable or detrimental as to justify resignation. The separation from employment is therefore disqualifying and benefits are 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 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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$181.00 for a total of 11 weeks, from the benefit week ending March 20, 2021 through the benefit week ending May 29, 2021. The total amount of benefits paid to date is \$1,991.00. Because the administrative law judge now finds claimant disqualified from benefits from the date of separation, she has been overpaid in this amount.

Because employer did not 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 not be recovered from claimant. However, neither shall benefits be charged to employer. This is because the failure to participate was due to no fault of the employer. The employer made reasonable efforts to participate but was unable to reach a department representative to do so. Benefits are therefore charged to the 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...

Claimant received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$300.00 for a total of 11 weeks, from the benefit week ending March 20, 2021 and continuing through the benefit week ending May 29, 2021. The total amount of FPUC paid is \$3,300.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is ineligible for FPUC. Claimant has therefore been overpaid FPUC in the amount of \$3,000.00. That amount is subject to recovery.

DECISION:

The April 12, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on January 25, 2021 without a showing of misconduct is REVERSED. Claimant voluntarily resigned without good cause attribute to employer. Benefits are therefore denied from the date of separation and continuing until claimant has earned wages for insured work equal to ten times her weekly benefit amount, provided she is not otherwise disqualified or ineligible at that time.

Claimant has been overpaid benefits. However, benefits shall not be recovered and employer shall not be charged. The charge for benefits shall instead be absorbed by the fund.

Claimant has been overpaid FPUC in the amount of \$3,000.00. That amount is subject to recovery.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 28, 2021
Decision Dated and Mailed

abd/lj

Note to Claimant:

This decision determines you have been overpaid FPUC, PEUC, and/or LWAP. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.