

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REGINA L BROWN

Claimant

BURLINGTON CARE CENTER INC

Employer

APPEAL 20A-UI-07597-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

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

PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 23, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2020. The claimant participated. The employer participated through Vicki Irvin.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A and Employer Exhibit 1 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

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 eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a social services director. The claimant worked for the employer for approximately 21 years. In addition to being the social services director, the claimant had on occasion trained new CNAs and would fill in as CNA when the employer was short staffed. Ms. Irvin described the claimant as one the best employees she had on staff.

On March 10, 2020, employer announced that all residents would need to be relocated temporarily and all staff would transfer as well. Staff and residents would be relocated to Mount Pleasant, Iowa which is approximately 30 minutes from Burlington, Iowa. Employer expected

that the relocation would last four to six months. Employer explained to all employees that they would keep their jobs at the exact same hours and wages and that it would offer a free shuttle service from Burlington, Iowa to Mount Pleasant, Iowa to mitigate transportation issues and costs for employees.

Prior to the relocation, Ms. Irvin approached the claimant and asked if she would help train the CNAs as they adjusted to the new facility. Ms. Irvin offered the claimant a pay increase to offset the additional work, the claimant countered with an additional \$.50 per hour, to which the employer agreed. Prior to the relocation, the plan of when and how the claimant would train was not confirmed by the employer.

The undisputed evidence is the claimant worked one day at the Mount Pleasant facility. On March 17, 2020, she arrived to the premises dressed and expecting to work in social services. Upon arrival, she was informed that she was "working the floor" by the DON on duty. The claimant felt she was being talked down to and being treated as though she was demoted to staff level that day. Despite her frustrations, she and her staff worked the shift, in light of being out of their comfort zones.

The undisputed evidence is the day was chaotic and very hard. The claimant stated she worked for five hours without a break and it began to impact her insulin levels, as she is diabetic. She did not inform the new staff she was diabetic, but did state she needed a break and was granted one. At one point, the DON commented that the claimant and her staff would not be able to keep the pace they were running and would run themselves ragged. The claimant was offended by the comment, which she felt was unsupportive.

The claimant was ill and reported absent March 18, 19 and 20. The DON told the claimant she could come to work with a mask on. The claimant stated she was sick and using her sick time as allowed. The claimant also told the employer that she would never return to the Mount Pleasant building, which the employer interpreted to mean she quit the employment (Employer Exhibit 1).

Prior to quitting, the claimant did not contact the facility administrator or Ms. Irvin to discuss her concerns with the assignment at Mount Pleasant or her concerns of unprofessionalism experienced there. She did contact one representative, who told her she needed to be an adult about the matter and who the claimant did not feel took her concerns seriously. Separation thereby ensued.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$10,767.00, since filing a claim with an effective date of March 15, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received seventeen payments of \$600 each (total: \$10,200) in FPUC.

The administrative record also establishes that the employer did participate in the June 17, 2020 fact-finding interview or make a witness with direct knowledge available for rebuttal. While Ms. Irvin initially missed the call because she was on another call with IWD, she did provide a statement to the IWD deputy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

In this case, the claimant quit her employment, without notice, when she told the employer she was not returning after working one shift at the employer's Mount Pleasant facility. The claimant had agreed to the temporary relocation, which was expected to last four to six months. Because the claimant agreed to the change and performed work at the new facility, the administrative law judge is not persuaded she quit due to a change of contract from hiring. See Iowa Admin. Code r. 871-24.26(1).

Rather, the credible evidence presented is the claimant had a rough first day at the Mount Pleasant facility, beginning with thinking she was going to be working in social services that day, only to be told she was "staff" with the CNAs instead. It is understandable that the claimant

would be upset and frustrated that day. The claimant however, did not take reasonable steps to alert the employer that she was contemplating quitting after twenty-one years, based upon the day at the Mount Pleasant facility. Rather, the claimant called off of work, telling the employer she would not return to the building and made one effort to contact the employer to report the “unprofessionalism” she experienced on her first day at Mount Pleasant.

Reasonably, the claimant could have called Ms. Irvin to ask for clarification of job duties since they had agreed the claimant would remain on social services and help with the CNAs, or even alerted Ms. Irvin to the fact she was blindsided upon arrival to facility and being told she had to work the floor with staff. While the administrative law judge is sympathetic to the claimant’s bad day at the Mount Pleasant facility, she is not persuaded that a reasonable person would quit the employment after twenty-one years, based upon the one bad day at Mount Pleasant, without taking some steps to preserve employment. Had Ms. Irvin been made aware of what happened, she could have reasonably intervened, between the claimant and the Mount Pleasant facility, as it was clear from the evidence that she valued the claimant’s loyalty and tenure with the employer. Based on the evidence presented, the administrative law judge is not persuaded the conversations, words used or conditions between the claimant and the DON/Mount Pleasant facility were so severe or escalated to a point that would be deemed harassment or a hostile work environment to justify immediate resignation.

Therefore, based upon the evidence presented, the administrative law judge concludes the claimant may have had personally compelling reasons to quit the employment, but has not established it was due to good cause attributable to the employer, according to Iowa law. Accordingly, benefits are denied.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

Iowa Code § 96.3(7)a-b 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 § 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 § 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.

(1) 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 states pursuant to § 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 to which she was not entitled. The claimant has been overpaid benefits in the amount of \$9,620.00. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for 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 it did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits.

The employer satisfactorily participated in the scheduled fact-finding interview by way of Vicki Irvin. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay the benefits she received and the employer's account shall not be charged.

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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, she also received an additional \$10, 200.00 in FPUC benefits. The claimant may have to repay the benefits received thus far, unless the claimant applies and is approved for PUA, as directed in the paragraph below.

DECISION:

The June 23, 2020, (reference 01) unemployment insurance decision is REVERSED. The claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid \$9,620.00 in regular unemployment insurance benefits. Because the employer participated in the fact-finding interview, the employer is relieved of charges and the claimant must repay the overpayment.

The claimant has also been overpaid \$10,200.00 in Federal Pandemic Unemployment Compensation.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits. 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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

Jennifer L. Beckman

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August 20, 2020
Decision Dated and Mailed

jlb/sam