

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAYMOND J SUMPTER
Claimant

XPAC
Employer

APPEAL 21A-UI-14552-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(1) – Voluntary Quitting of Work
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 Sec 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 21, 2021 (reference 01) unemployment insurance decision that allowed benefits to the claimant based upon a discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on August 20, 2021. The claimant did not participate. The employer participated through witness Erin Hammond. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any regular 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 worked full-time for the employer as a material handler. His first period of employment ended on March 11, 2021, when he last physically worked on the job. The claimant stopped reporting for scheduled shifts after March 11, 2021 for an unknown reason. The employer had continued work available to him after March 11, 2021 if he would have come to work.

The claimant had a second period of employment with this employer from June 23, 2021 through July 2, 2021. That separation of employment has not yet been investigated by the Benefits Bureau of Iowa Workforce Development and will be remanded for an initial investigation and determination.

The claimant filed a claim for unemployment insurance benefits with an effective date of March 14, 2021. He was paid regular unemployment insurance benefits of \$1,812.00 from March 14,

2021 through June 5, 2021. He was paid FPUC benefits of \$3,600.00 for the weeks between March 14, 2021 and June 5, 2021. No fact-finding interview was scheduled or held by Iowa Workforce Development and the employer did not have any opportunity to participate in a fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code §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.

Claimant had an intention to quit and carried out that intention by failing to come to work for additional scheduled shifts. As such, 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 (Ia. Dist. Ct. App. 1973).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer.").

In this case, no reason as to why the claimant voluntarily quit his employment was given. As such, the claimant has failed to establish his burden that his voluntary quitting of work was with good cause attributable to the employer. The separation from employment is disqualifying and unemployment insurance benefits funded by the State of Iowa must be denied effective March 14, 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 to which he was not entitled. 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 provided an opportunity to participate in the fact-finding interview when it did not receive notice to participate in one. 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 contacted for a fact-finding 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 phone call to participate in a fact-finding interview. Given these facts, the claimant is not required to repay the unemployment insurance benefits funded by the State of Iowa that he received effective March 14, 2021. Any charges for benefits should be absorbed by the fund.

The next issue is whether the claimant is required to repay the FPUC benefits he received. The administrative law judge finds that he is required to repay the FPUC benefits he received from March 14, 2021 through June 5, 2021 in the amount of \$3,600.00.

On March 27, 2020, President Trump signed the CARES Act, which included the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2104 of the CARES Act created the FPUC program, which was a new temporary federal supplemental payment. On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 203

reauthorizes the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 but modifies the weekly supplement amount to \$300.00.

PL 116-136, Sec. 2104 (15 U.S.C. 9023) 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...

Section 203 of the Continued Assistance for Unemployed Workers Act of 2020 provides in pertinent part as follows:

(a) IN GENERAL. -- Section 2104(e) of the CARES Act (15 U.S.C. 9023(e)) is amended to read as follows:

"(e) APPLICABILITY. -- An agreement entered into under this section shall apply --

(1) to weeks of unemployment beginning after the date on which such agreement is entered into and ending on or before July 31, 2020; and

(2) to weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021."

(b) AMOUNT.-

(1) IN GENERAL. -- Section 2104(b) of the CARES Act (15 U.S.C. 9023(b)) is amended --

(A) in paragraph (1)(B), by striking "of \$600" and inserting "equal to the amount specified in paragraph (3)"; and

(B) by adding at the end of the following new paragraph:

"(3) AMOUNT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.-

“(A) IN GENERAL. – The amount specified in this paragraph is the following amount:

“(i) For weeks of unemployment beginning after the date on which an agreement is entered into under this section and ending on or before July 31, 2020, \$600.

“(ii) For weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021, \$300.”.

In this case, the claimant is disqualified from receiving regular unemployment insurance benefits due to his separation from employment. Accordingly, this also disqualifies claimant from receiving FPUC benefits. In addition to the regular benefits claimant received, the claimant also received an additional \$3,600.00 in FPUC benefits from March 14 through June 5, 2021. The claimant is overpaid the FPUC benefits he received and is required to repay those benefits to the agency, unless a waiver is requested and granted.

DECISION:

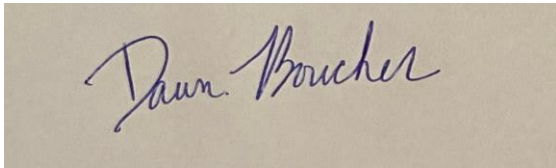
The June 21, 2021 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his March 11, 2021 separation date, and provided he is otherwise eligible.

The claimant has been overpaid regular unemployment insurance benefits of \$1,812.00 between March 14, 2021 and June 5, 2021 but is not obligated to repay the agency those benefits he received. The employer was not given an opportunity to participate in the fact-finding interview. Regular unemployment insurance benefits paid from March 14, 2021 through June 5, 2021 shall be charged to the fund.

The claimant is overpaid FPUC benefits in the amount of \$3,600.00 for weeks between March 14, 2021 and June 5, 2021. The claimant is required to repay those FPUC benefits he received to the agency.

REMAND:

The issues of whether the claimant's second period of employment from June 23, 2021 through July 2, 2021 is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

August 30, 2021
Decision Dated and Mailed

db/mh