

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TANNER ERVOLINO
Claimant

BRAD DEERY MOTORS
Employer

APPEAL NO. 20A-UI-04443-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (2)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 13, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 9, 2020. Claimant participated personally. Employer participated by hearing representative Jacqueline Jones and witnesses Joel Kilburg, Nick McCutcheon, and Dan O'Mara.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

Whether claimant is eligible for Federal Pandemic Unemployment Compensation

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 2, 2020. Claimant voluntarily quit on April 2, 2020 after claimant became frustrated with multiple actions of employer.

Claimant stated that he was initially frustrated with employer when employer gave what he thought was a threat. When the Covid concerns were initially coming about, employer stated at a meeting that if people didn't want to come to work, they would be deemed as quitting, and employer would fight unemployment benefits and not hire the person back.

The next day claimant received information from the owner of the business that the statements from the previous day were incorrect, and the business would not act in that manner. Claimant then decided to take some leave as he was nervous about Covid.

A few days later claimant returned to work. When he returned, claimant was attempting to execute a car sale. The sale was hung up as the bank was unwilling to make a loan in the amount employer was asking for the vehicle. Claimant found it to be unethical that employer was asking thousands more than book value for the vehicle and he did not get his sale.

Claimant decided that employer was unsafe in having so many people at the business when few customers were there. He was fearful that he might get Covid and spread it to his mother. He thought he was threatened at the March 20, 2020 meeting, and thought employer was trying to force him to quit by not working with customers on the price of a used vehicle. He put in his resignation on April 2, 2020.

Employer stated that claimant's job was not in jeopardy and that employer wanted claimant to remain at work. Employer stated they did not try to sabotage claimant's sale, but argued that employer can set the price they wish to maximize profits based on rarity of a vehicle.

Claimant has not received unemployment benefits in this matter.

Claimant has not received Federal Pandemic Unemployment Compensation.

Employer did not substantially participate in fact finding in this matter.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because employer was viewed to have threatened claimant, operate in an unethical manner, and operate an unsafe place of business. Claimant is incorrect in each of these interpretations that led to his quitting.

The owner of the business told claimant he could take a leave if he felt unsafe at work and his job would not be in jeopardy. Any potential threat by a manager on March 20, 2020 was removed the next day by the owner, who held ultimate control.

Claimant's complaint about pricing of a vehicle is understandable frustration, but employer has the right to charge what they wish for a vehicle. Eventually, the vehicle may not sell and employer may have to lower the price, but at the time of the attempted sale employer made a choice not to lower the price.

Claimant is also reasonable to not want to spread Covid to his high risk mother, but provided no evidence that the place of business was fertile grounds for picking up or spreading the disease.

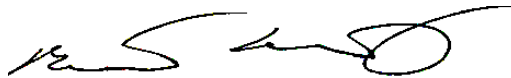
The overpayment issue is moot as claimant has not received benefits and is not eligible for benefits.

The issue of employer participation is moot.

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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The decision of the representative dated May 13, 2020, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

June 24, 2020
Decision Dated and Mailed

bab/scn