

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIARA HINTON
Claimant

APPEAL 20A-UI-15450-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 06/07/20
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
IAC R. 871-24.10 -
PL 116-136, SEC. 2104 – Is the claimant eligible for FPUC?

STATEMENT OF THE CASE:

The employer filed an appeal from the November 12, 2020 (reference 05) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 26, 2021. The claimant, Kiara Hinton, did not participate. The employer, Express Services Inc., participated through Jim Cole. No exhibits were received.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Was the claimant discharged for disqualifying job-related misconduct?
Was the claimant overpaid benefits?
Is the claimant eligible for FPUC?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was an employee of a temporary employment firm. Claimant began her most recent assignment on January 7, 2020 at Richie Lou Foods as a production worker. The last day claimant worked this assignment was January 14, 2020. Claimant's assignment ended on January 14, 2020 when claimant was discharged for attendance. After the ending of the assignment with Richie Lou Foods on January 14, 2020, claimant did not contact the employer until January 27, 2020 for additional work.

After the assignment ended, the claimant failed to report to the employer within three working days and request further assignment as required by written policy. Claimant was made aware

of the policy to request additional work assignment within three working days of the end of the previous assignment when she was hired.

The claimant received regular UI benefits in the amount of \$3,632.00 for the weeks between July 18, 2020 and November 20, 2020. The employer did participate in the fact-finding interview. There was no fraud or willful misrepresentation by the Claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation was without good cause attributable to the employer. Benefits are denied.

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(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. 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 employer had notice of the claimant’s availability because it notified her of the end of the assignment on January 15, 2020, but she did not request another assignment.

As such, the claimant failed to comply with Iowa Code section 96.5(1)j and he voluntarily quit employment without good cause attributable to the employer. The separation is disqualifying. Benefits are denied.

The next issue to be decided is whether claimant was overpaid regular state unemployment benefits. For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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) (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 reveal on appeal regarding the issue of the individual’s separation from employment.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$3,632.00. The benefits were not received due to any fraud or willful misrepresentation by the claimant. However, the employer did participate in the initial proceeding to award benefits. As such, the claimant is obligated to repay to the agency benefits she received in connection with this employer's account.

The next issue to be determined is whether claimant has been overpaid FPUC benefits.

Because the qualifying decision has been reversed, benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid regular state UI in the gross amount of \$3,632.00 for the period between July 18, 2020 and November 20, 2020. Claimant is required to repay those benefits.

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...

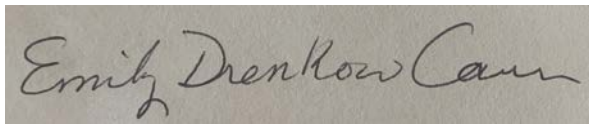
Because claimant is disqualified from receiving regular state UI, she is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$4,200.00 for the period between July 18, 2020 and November 20, 2020. Claimant is required to repay those benefits.

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, but who are currently 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 under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The November 12, 2020 (reference 05) unemployment insurance decision is reversed. Claimant voluntarily quit without good cause attributable to the employer. Benefits are denied. Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$3,632.00 for the period between July 18, 2020 and November 20, 2020. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$4,200.00 for seven-week period between March 29, 2020 and May 16, 2020, which must be repaid.



Emily Drenkow Carr
Administrative Law Judge

February 16, 2021
Decision Dated and Mailed

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