

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KEANA HAMPTON**  
Claimant

**CEDAR RAPIDS ST PIUS X**  
Employer

**APPEAL 21A-UI-04924-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On February 8, 2021, the employer, Cedar Rapids—St. Pius X, filed an appeal from the November 6, 2020 (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was on a short-term layoff and was eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 10:05 a.m. on Wednesday, April 14, 2021. The claimant, Keana Hampton, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Cedar Rapids—St. Pius X, participated through witnesses Connie Schulte, Director; and Geri David, Bookkeeper and Administrative Assistant; and hearing representative Paul Jahnke represented the employer. Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record. This hearing was held along with Appeal 21A-UI-04924-LJ-T, and the two created one comprehensive record.

**ISSUES:**

Did the employer file a timely appeal?  
Was the claimant totally, partially, or temporarily unemployed effective April 5, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an infant-12 month classroom teacher, from February 25, 2019, until May 26, 2021, when she quit her employment.

Effective April 5, 2020, claimant and other employees were laid off due to a lack of work. The employer went through a temporary layoff due to the pandemic, and claimant and her coworkers were briefly unemployed.

Claimant filed for benefits for the weeks ending April 11, April 18, April 25, May 2, and May 9, 2020. For the week ending April 11, claimant reported benefits in excess of her weekly benefit amount (\$451.00) plus fifteen dollars and she received no benefits that week. For the weeks

ending April 18, April 25, and May 2, claimant reported no wages and received full benefits each week. For the week ending May 9, claimant reported earning \$296.00 in wages and she received partial benefits for that week.

Claimant returned to work on May 11, 2020. She worked the following two weeks.

On May 21, the employer received information about a derogatory posting that claimant made about Schulte on Facebook. Another employee presented information to the employer showing that claimant posted, "My boss is a douche." According to the employer, claimant is connected on Facebook to parents who bring their children to the employer's daycare. This posting jeopardized the professional relationship the employer had built with these parents.

On May 22, Schulte spoke with claimant about the Facebook posting at issue. Claimant admitted to posting the comment, and she stated that she should not have done it. At that point, the employer placed claimant on a paid leave of absence pending a determination on an appropriate response to claimant's behavior.

On Tuesday, May 26, Schulte called claimant and instructed her to come in and meet with the employer at 2:00 p.m. Claimant did not follow this clear instruction and report for this meeting. Because claimant failed to come to this meeting, the employer wrote claimant a letter stating she was being discharged. The employer stated that failing to come to the May 26 meeting was the reason for the discharge.

The employer maintains a social media policy in its employee handbook. Under this policy, employees are asked not to post anything on social media related to the children, families, or staff of the daycare. Claimant had never been warned for violating this policy in the past.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$8,665.49, since filing a claim with an effective date of April 5, 2020, for the twenty-four weeks ending September 19, 2020. Claimant also received Federal Pandemic Unemployment Compensation in the amount of \$7,200. in connection with her weekly claims.

The administrative record also establishes that the employer did participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation that, without rebuttal, would have resulted in disqualification. Jahnke received communication from Mark Holloway, Business Service Representative out of the Davenport workforce center; dated October 29, 2020, regarding claimant Keana Hampton and her separation from employment. Jahnke responded to him on Friday, October 30 at 6:15 p.m. Jahnke told him that claimant was not separated due to the pandemic. He provided details regarding the separation that occurred. Jahnke was not asked for any additional information after this.

The unemployment insurance decision was mailed to the appellant's address of record on November 6, 2020. The employer received that decision and transmitted an appeal by fax on November 16, 2020. The employer received a confirmation that it went through, and had no reason to believe that the appeal was not successfully transmitted to the Appeals Bureau. Later, in February 2021, Jahnke started to receive notices of hearing for appeals he filed later than mid-November, so he called the Appeals Bureau by phone and inquired. At that point, he learned the Appeals Bureau had no record of the appeal, so he re-faxed the appeal that same day, February 8, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

### Issue #1: Separation from Employment

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d

768, 771 (Iowa 1982). "[W]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlt. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988).

In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

Here, claimant was discharged for insubordination: the employer gave her a directive to report to a meeting at 3:00 p.m. on May 26, and claimant failed to report to that meeting. Claimant was aware that her job was in jeopardy at that time and any reasonable employee would have understood that reporting to the meeting on May 26 was imperative in order to continue employment. Claimant did not report to the meeting as instructed, and she failed to provide any evidence or testimony offering a reason for her non-compliance. Therefore, the administrative law judge finds that claimant's failure to report on May 26 was insubordinate and disqualifying misconduct. Benefits must be withheld.

## **Issue #2: Overpayment, Repayment, and Chargeability of Regular Unemployment Insurance Benefits**

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. 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 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.

(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 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 they 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. Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

### **Issue #3: Overpayment of Federal Pandemic Unemployment Compensation**

The final issue for adjudication is whether claimant was overpaid Federal Pandemic Unemployment Compensation, or FPUC benefits. PL 116-136, 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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

Here, because claimant is not eligible for regular unemployment insurance benefits, she is also not eligible for FPUC benefits. Therefore, claimant has received FPUC benefits to which she was not entitled. The administrative law judge concludes that claimant has been overpaid FPUC benefits in the amount of \$7,200.00. Those benefits must be recovered in accordance with Iowa law.

#### **DECISION:**

The November 6, 2020 (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment due to job-related misconduct. 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 unemployment insurance benefits in the amount of \$8,665.49 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

The claimant has been overpaid FPUC benefits in the amount of \$7,200.00. Those benefits must be recovered in accordance with Iowa law.

#### **REMAND:**

The issue of whether claimant has been overpaid Lost Wages Assistance Program benefits is remanded to the Benefits Bureau of Iowa Workforce Development for calculation and determination.



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April 19, 2021  
Decision Dated and Mailed

lj/ol