

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHTON C ADES
Claimant

ELECTRICAL POWER PRODUCTS INC
Employer

APPEAL 24A-UI-03577-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/24
Claimant: Respondent (2)

Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 4, 2024, the employer/appellant filed an appeal from the March 26, 2024, (reference 01) unemployment insurance decision that allowed benefit based on claimant voluntarily quitting on February 22, 2024 because the claimant had difficulty in getting their pay. The Iowa Workforce Development representative determined the quitting was caused by the employer. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2024. Claimant did participate. Employer participated through Human Resources Manager, Amanda Haugen. Exhibits A, B, C, D, E, F, G, H, I, J, K, 1, 2, 3, and 4 were admitted into the record. Administrative notice was taken of the claimant's unemployment insurance benefits records, including DBRO and the IBEW Local 347 Combination Plan Document and Summary Plan Description effective September 1, 2012 and Amendments 3, 4, 5, 6, 7, 8, 9, and 10. (Located at <https://ibew347benefits.com/page/information/summaryplan.aspx>).

ISSUES:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant overpaid benefits?
- III. Should the claimant repay benefits?
- IV. Should the employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 17, 2022 in a quality assurance position. The claimant asked to change jobs to the shop area. On August 21, 2023, the employer started working as a

mounting technician in the shop area. The claimant eventually moved to a full-time switchboard electrician. The employer is a union contractor and these positions are covered under the International Brothers Electrical Union (IBEW) Local No. 347's union contract. The claimant is required to be a union member for these positions.

Under the union contract, employers agree their employees that are union members will be covered by IBEW Local Union No. 347's health and welfare plan. (Exhibit 2, pg. 1). The contract requires the employer to pay \$6.76 per hour that the employee/union member works to the Board of Trustees of the Electrical Workers Health and Welfare Fund. (Exhibit 2, pg. 2). The union then sets up a dollar bank that is an account that is established for each union member. (IBEW Local 347 Combination Plan Document and Summary Material Modification, pg. 1). When the union member works for an employer the contributions that the union member earns are credited to the union member's dollar bank. (IBEW Local 347 Combination Plan Document and Summary Material Modification, pg. 1). If the union member is an eligible employee and they have sufficient contribution in their dollar bank to cover the plan's monthly premium, the monthly premium will be automatically drawn from the union member's dollar bank to pay for their coverage. (IBEW Local 347 Combination Plan Document and Summary Material Modification, pg. 1). If the union member is eligible but does not have sufficient contribution in their dollar bank to cover the Plan's monthly premium they may elect to pay the remaining premium in accordance with the partial self-pay provisions. (IBEW Local 347 Combination Plan Document and Summary Material Modification, pg. 1).

The dollar bank established for the union member is a record keeping account with the purpose of keeping track of contributions. (IBEW Local 347 Combination Plan Document and Summary Material Modification, pg. 1). The union member's dollar bank consists solely of employer contributions. (IBEW Local 347 Combination Plan Document and Summary Material Modification, pg. 1).

The employer transfers to the Board of Trustees of the Electrical Workers Health and Welfare their required contribution for each employee based on the amount of hours they worked for the month. The employer did transfer the required amount for the claimant each month. The employer does not have any authority to change health insurance plans, administer the plan, make decisions regarding eligibility for health insurance or whether benefits are approved by health insurance. These decisions rest with IBEW local No. 347, their plan administrator, and the health insurance network.

IBEW health and welfare fund is self funded. It offers "the United Healthcare network of Physicians, Hospitals, Facilities and other health card providers. United Healthcare contracts with these providers to offer medical services to Participants and Dependents at reduced rates." (IBEW Local 347 Combination Plan Document, pg. 49). Amendment 4 of the IBEW Local No. 347 Plan document lists CompuSys of Utah, Inc. as the day-to-day administration for the Plan as its third-party administrator.

"This day-to-day administration provided by CompuSys includes, but is not limited to, determining whether an individual is eligible for coverage, issuing Certificates of Creditable Group Health Plan Coverage and administering COBRA. CompuSys also processes claims for Comprehensive Medical Benefits, Short-Term Disability Benefits, Death Benefits, and HRA Benefits." (IBEW Summary Amendment 4, pg. 1).

The union combination plan documents and its amendments provide what medical benefits are covered under the health and welfare fund and what is excluded. The union combination plan

documents and its amendments also specify when the union member is no longer eligible to participate in the plan.

The claimant received health insurance benefits through IBEW local No. 347 for a period of time. On or about December 28, 2023, the claimant received a statement from IBEW 347 Electrical Workers Health and Welfare Fund. (Exhibit K). The statement required the claimant to submit \$83.07 to continue receiving benefits because he did not work enough hours to cover the full monthly premium. (Exhibit K). The claimant submitted the premium payment to continue his eligibility for benefits.

The claimant began having problems accessing his benefits. On February 9, 2024, the claimant attempted to use the Doctor on Demand and was not able to access it. (Exhibit A). The claimant contacted the union for assistance and they provided a possible solution. (Exhibit H). The claimant was not able to access Doctors on Demand. The claimant again attempted to use Doctor on Demand on February 20, 2024 and was not able to access it. (Exhibit E). The claimant sought assistance from the employer regarding his ability to access the benefits. The employer directed the claimant to contact IBEW local No. 347 because they are responsible for providing and administering the benefits. The union directed the claimant to ask his questions to the employer. The claimant attempted to contact UnitedHealth to discuss the issue but he did not receive a call back from them.

Claimant was not getting help from the employer's human resources department. The employer was not able to assist because they did not have any access or authority over the claimant's insurance benefits. Any time an employee/union member has problems with their health insurance, the employer's human resources has to contact the union for assistance since they have control of the health fund that provides the employees benefits. On February 22, 2024 the claimant submitted his written resignation due to his ongoing issues regarding his insurance. (Exhibit 1).

The claimant filed for benefits with an effective date of March 10, 2024. The claimant's gross weekly benefit amount is \$408.00. (DBRO). The claimant began receiving benefits March 10, 2024, and has received them through April 20, 2024. (DBRO). The claimant has received four weeks of benefits worth a gross total amount of \$1,632.00. (DBRO).

The employer participated in the fact-finding interview with the Iowa Workforce Development representative. The employer provided exhibits 1-4 to the fact-finder.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.25 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case the claimant submitted his written resignation due to his ongoing issues with his ability to access his health insurance. Although the claimant's frustration is understandable, the lack of access was not due to the employer. The issue appears to be due to the union, the Health and Welfare plan administrator (CompuSys), or even the Doctors on Demand site. The employer completed their obligations by making their required contributions to the Health and Welfare Fund relieves them from being responsible for the access to the health insurance. This is demonstrated by the fact the claimant did have benefits for a period of time and received continuing statements showing that his contributions were being deposited into his dollar bank account. The employer has no authority over the health and welfare fund, the plan administrator (CompuSys) or United Healthcare. The claimant agreed to be a union member and subjected to the union contract, so any issue with the ability to access insurance should be directed to them. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

Since the claimant's separation is disqualifying, benefits were paid to claimant which claimant is not entitled. The claimant received \$1,632.00 in unemployment benefits for four weeks beginning March 10, 2024 through April 20, 2024. Next it must be determined if the employer participated in the fact-finding interview and if the claimant must repay the benefits.

Iowa Code section 96.3(7)a-b, as amended in 2008, 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)(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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(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.

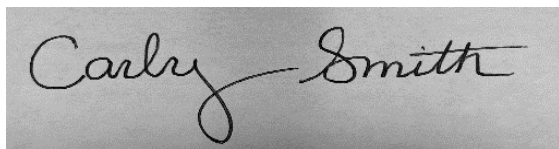
This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The employer did participate in the fact-finding interview with Iowa Workforce Development when they participated in the phone call. Since the employer did participate, the claimant is required to repay the \$1,632.00 in unemployment benefits he received from March 10, 2024, through April 20, 2024. The employer's account shall not be charged.

DECISION:

The March 26, 2024 (reference 01) unemployment insurance decision is REVERSED. The claimant voluntarily quit employment on February 22, 2024 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 been paid wages for insured work equal to ten times their weekly benefit amount after February 22, 2024 and provided they are otherwise eligible.

Claimant has been overpaid unemployed insurance benefits in the amount of \$1,632.00 in unemployment benefits he received from March 10, 2024, through April 20, 2024. The claimant is obligated to repay these benefits. The employer's account shall not be charged.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. The "C" is large and loops around the "arly". The "Smith" is written in a similar cursive style. The signature is centered on a light gray background.

Carly Smith
Administrative Law Judge

April 30, 2024
Decision Dated and Mailed

CS/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.