

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SABRINA ERTZ
Claimant

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

APPEAL NO. 20A-UI-07161-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Respondent (2/R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136 Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 16, 2020, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on February 12, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on August 4 2020. Claimant Sabrina Ertz participated. Beverly Maez of Employers Unity represented the employer and presented testimony through Jen Pfaff and Jason Spies. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX) and received Exhibits 1 through 5 into evidence. The administrative law judge took official notice of the clerk of court records regarding Scott County criminal case number SRCR405490, which records are available to the public at www.iowacourts.state.ia.us.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant voluntarily quit without good cause attributable to the employer.
Whether the claimant was overpaid regular benefits.
Whether the claimant is required to repay the regular benefits.
Whether the employer's account may be charged for overpaid regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sabrina Ertz was employed by Kimberly Chrysler Plymouth, Inc. as a full-time clerk from July 2019 until February 12, 2020, when she voluntarily quit because the employer would not guarantee that the employment would extend beyond a seven-day jail sentence Ms. Ertz was required to begin serving no later than March 3, 2020. On February 4, 2020, Ms. Ertz entered a guilty plea to violating a no contact order entered in Scott County criminal case number SRCR405490, wherein Ms. Ertz was the defendant. The court ordered Ms. Ertz to commence serving the

seven-day jail sentence no later than March 3, 2020. The court ordered the sentence to be serviced in one sitting. The court did not authorize work-release.

On February 5, 2020, Ms. Ertz notified the employer of the court-ordered jail sentence. Ms. Ertz wanted a guarantee from the employer that the employer would hold her job for her while she served the jail sentence. On or before February 12, 2020, the employer notified Ms. Ertz that the employer could not accommodate a week-long absence during the first week of March, which would be a busy time for the employer. The employer advised Ms. Ertz that if Ms. Ertz could serve the sentence in mid-February, the employer would likely be able to accommodate the absence. Ms. Ertz was unable to commence serving the sentence in mid-February because she lacked alternative childcare for her children. The employer invited Ms. Ertz to continue to work until March 3, 2020, the latest date by which Ms. Ertz could commence serving her jail sentence. On February 12, 2020, an hour after a discussion regarding whether and when the employer would accommodate the extended absence, Ms. Ertz notified the employer that she was quitting the employment. Ms. Ertz had erroneously concluded that she was not welcome in the employment. Ms. Ertz signed a resignation form that the employer provided and voluntarily separated from the employment that day. Ms. Ertz had calculated, correctly or incorrectly, that she would save money on her daycare expense by leaving at that point, rather than waiting until March to separate from the employment.

Ms. Ertz established a claim for benefits that was effective April 12, 2020 and received \$4,928.00 in regular benefits for 16 weeks between April 12, 2020 and August 1, 2020, along with \$9,000.00 in Federal Pandemic Unemployment Compensation for 15 weeks between April 12, 2020 and July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

The evidence establishes a voluntary quit, not a discharge from the employment. Ms. Ertz elected to end the employment on February 12, 2020, though the employer continued to have work for her at the time. The employer's refusal to accommodate a week-long absence at a future date did not amount to a discharge on February 12, 2020. The employer was under no obligation to accommodate an absence, given the circumstances. See Iowa Code 96.5(11), below. Ms. Ertz initiated and followed through with the voluntary separation by signing the resignation form and by voluntarily separating from the employment on February 12, 2020.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(17) and (21) 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:

(17) The claimant left because of lack of child care.

...

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Code section 96.5(11) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration –disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.

When the separation from employment is based on incarceration, the claimant has the burden of proving the claimant is not disqualified for benefits under Iowa Code section 96.5(11). Iowa Code section 96.6(2).

Iowa Administrative Code rule 871-24.26(17) provides as follows:

24.26(17) Separation due to incarceration.

a. The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.26(17)“a”(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96). If all of the conditions of subparagraphs 24.26(17)“a”(2), (3)and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, Irving v. Employment Appeal Board, 883 N.W.2d 179.

The evidence establishes a February 12, 2020 voluntarily quit without good cause. The parties never got to the point of a separation based on incarceration because Ms. Ertz elected to voluntarily quit the employment before then, based on her feeling that she was unwelcome in the workplace. The employer’s decision not to accommodate a future extended absence due to incarceration did not provide good cause for the February 12, 2020. Indeed, a March separation from the employment so that Ms. Ertz could serve the jail sentence would have constituted a voluntary disqualifying separation from the employment. Though the evidence fails to support Ms. Ertz’s assertion that she was unwelcome in the workplace, Ms. Ertz’s dissatisfaction with the work environment did not provide good cause attributable to the employer for the quit. Ms. Ertz made a calculation, correct or incorrect, that she would save on her childcare expense by leaving in February 2020. That calculation did not establish good cause attributable to the employer for the quit. Because the evidence establishes a voluntarily quit of the employment without good cause attributable to the employer, Ms. Ertz is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Ertz must meet all other eligibility requirements. The employer’s account shall not be charged for benefits paid to Ms. Ertz for the period beginning August 2, 2020.

The unemployment insurance law requires that regular benefits be recovered from a claimant who receives regular benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. A claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because

the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Because this disqualifies Ms. Ertz for benefits, the \$4,928.00 in benefits that she received for the 16 weeks between April 12, 2020 and August 1, 2020 is an overpayment of benefits. Because the fact-finding interview materials were not available for review at the time of the appeal hearing, the matter of deciding whether the overpaid regular benefits should be recovered from Ms. Ertz or be charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau.

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 Ms. Ertz is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$9,000.00 in FPUC benefits that Ms. Ertz received for the 15 weeks between April 12, 2020 and July 25, 2020 constitutes an overpayment of benefits. Ms. Ertz is required to repay those benefits.

DECISION:

The June 16, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment on February 12, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning August 1, 2020. The claimant is overpaid the \$4,928.00 in benefits that she received

for the 16 weeks between April 12, 2020 and August 1, 2020. This matter is remanded to the Benefits Bureau for determination of whether the claimant must repay the overpaid regular benefits or whether the overpaid benefits may be assessed to the employers account. The claimant is overpaid \$9,000.00 in FPUC benefits for 15 weeks between April 12, 2020 and July 25, 2020. The claimant must repay the overpaid FPUC benefits.



James E. Timberland
Administrative Law Judge

August 12, 2020
Decision Dated and Mailed

jet/sam