

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY L ZIRTZMAN
Claimant

PROGRESSIVE PROCESSING, LLC
Employer

APPEAL 20A-UI-11892-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
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 September 25, 2020, Progressive Processing, LLC (employer/respondent) filed an appeal from the September 15, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on July 2, 2020 but misconduct has not been shown.

A telephone hearing was held on November 19, 2020. The parties were properly notified of the hearing. Employer participated by HR Manager Ed Miller. Audria Gale participated as a witness for employer. Employer was represented by Hearing Representative Susan Chmelovsky. Randy Zirtzman (claimant/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time production technician. Claimant's first day of employment was October 10, 2016. The last day claimant worked on the job was May 31, 2020. Claimant's immediate supervisor was Mellissa Schneider. Claimant separated from employment on June 26, 2020. Claimant voluntarily resigned on that date.

Claimant was off from June 1 to June 4, 2020 due to illness. After that time, employer had difficulty getting in touch with claimant. It communicated with his wife on a few occasions but it was unclear whether claimant had recovered and when he may be able to return to work. After a couple weeks of spotty communication, employer became concerned about claimant's well-being and requested law enforcement perform a welfare check. At that time claimant asked law enforcement to notify employer that he no longer wished to work there. Claimant was aware there were leave options available to him, as he had utilized them in the past. However, he did not request leave. Claimant had not recently been disciplined or brought concerns to employer. Employer is unsure of the specific reason for claimant's resignation.

Employer did not receive notification of a fact-finding interview or receive a call from the department requesting further information. As such, it had no opportunity to provide information prior to the decision being issued.

The unemployment insurance system shows claimant has received weekly benefits totaling \$4,015.00 from the date of separation. Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$2,400.00 to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the September 15, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on July 2, 2020 but misconduct has not been shown is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected

misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer. The reason for claimant's resignation is unclear. As such, the administrative law judge cannot find it was for good cause attributable to employer. Claimant's separation from employment is therefore disqualifying and benefits must be denied.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 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) (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.

(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.

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.

Because the claimant's separation was disqualifying, claimant has been overpaid benefits in the amount of \$4,015.00. 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 benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, the employer did not participate in the fact-finding interview. Thus, claimant is not obligated to repay to the agency the benefits he received.

The law also states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. . . ." Iowa Code § 96.3(7)(b)(1)(a). In this case, the employer did not receive notification of a fact-finding interview or receive a call from the department requesting further information. As such, it had no opportunity to provide information prior to the decision being issued. Benefits were paid, but not because the employer failed to respond timely or adequately to the agency's request for information relating to the payment of benefits. Employer thus cannot be charged. Since neither party is to be charged, the overpayment is absorbed by the fund.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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 the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$2,400.00. Claimant is required to repay that amount.

DECISION:

The September 15, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on July 2, 2020 but misconduct has not been shown is REVERSED. Claimant is disqualified from benefits from the date of separation and continuing until he has earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Claimant has been overpaid benefits. However, benefits shall not be recovered and employer shall not be charged. The overpayment is charged to the fund.

Claimant has been overpaid FPUC in the amount of \$2,400.00. Claimant is required to repay that amount.

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Andrew B. Duffelmeyer
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November 30, 2020
Decision Dated and Mailed

abd/scn