

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROYNICKA E EVANS**  
Claimant

**APPEAL NO: 20A-UI-03502-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE HOLY FAMILY CATHOLIC**  
Employer

**OC: 03/22/20**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 17, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 20, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Joann O'Connell, Director Early Learning Center; Mary Sulentic, Human Resources; and Paul Jahnke, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

**ISSUE:**

The issues are whether the claimant voluntarily left her employment without good cause attributable to the employer and whether she is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time associate for Dubuque Holy Family Catholic from October 8, 2019 to March 24, 2020. She was discharged for three no-call/no-show absences.

On March 17, 2020, the claimant called the employer and stated she needed to contact her physician. On March 18, 2020, she called the employer and said she had a doctor appointment at 10:00 a.m. The employer instructed her to let it know what was going on and to get a doctor's release or note. The claimant was a no-call/no-show March 19, 2020, and the employer emailed her asking where she was. The employer said she did not call or report for work and was a no-call/no-show. It asked if she was planning to show up for work March 20, 2020. The claimant did not respond to the email. She was a no-call/no-show March 20 and March 23, 2020. The employer processed her termination paperwork March 24, 2020. The claimant called after the paperwork was done and said her doctor was back in town and she had a doctor's note and asked when she could return. The employer told her it terminated her employment.

The claimant has claimed and received regular unemployment insurance benefits in the amount of \$1,428.00 for the seven weeks ending May 9, 2020. She has received Federal Pandemic Unemployment Compensation in the amount of \$3,600.00 for the six weeks ending May 13, 2020.

The employer did not participate in the fact-finding interview because although it provided a telephone number and its documents to the Department prior to the April 14, 2020, fact-finding interview the fact-finder called the previous number listed for the Iowa Catholic Conference in Des Moines rather than Joann O'Connell's number in Dubuque.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

Iowa Admin. Code 871-24.25(4) 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. 871 IAC 24.25. 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, she is considered to have voluntarily left her employment without good cause attributable to the employer. Therefore, benefits are denied.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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 unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, 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's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact finding interview, the claimant is not required to repay the overpayment for her regular unemployment insurance benefits to the Department for benefits 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 section 96.3(7)(b)(1)(a). Here, the employer responded to the notice of a fact-finding interview by faxing a document identifying the phone number at which the proper representatives could be reached for the fact-finding interview. 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. Instead, benefits were paid because the employer did not receive a call from the Department. The employer thus cannot be charged. Since neither party is to be charged, the overpayment is absorbed by the fund.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid 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 \$600.00 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

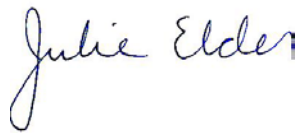
(2) Repayment.—In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State

shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies the claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits the claimant received, she also received an additional \$3,600.00 in Federal Pandemic Unemployment Compensation benefits for the six weeks ending May 13, 2020. The claimant is required to repay those benefits.

**DECISION:**

The April 17, 2020, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. 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 received regular benefits in the amount of \$1,428.00 for the seven weeks ending May 9, 2020, but is not obligated to repay the Department those benefits. The claimant is overpaid Federal Pandemic Unemployment Compensation in the amount of \$3,600.00 for the six weeks ending May 13, 2020. She must repay those benefits.



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Julie Elder  
Administrative Law Judge

May 27, 2020  
Decision Dated and Mailed

je/scn