

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACK STUBBS
Claimant

RAYGUN LLC
Employer

APPEAL 21A-UI-11327-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21
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
P.L. 116-136, Sec. 2014 – Federal Pandemic Unemployment Compensation
P.L. 116-136, Sec. 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On April 6, 2021, Raygun LLC (employer/respondent) filed an appeal from the March 30, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was laid off on July 13, 2020 due to a lack of work.

A telephone hearing was held on July 9, 2021. The parties were properly notified of the hearing. Employer participated by owner Mike Draper. Jack Stubbs (claimant/respondent) participated personally. Employer's Exhibit 1 admitted. 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 (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), or Lost Wage Assistance Payments (LWAP)?

FINDINGS OF FACT:

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

Claimant worked for employer as a part-time employee. Claimant's first day of employment was April 12, 2017. The last day claimant worked on the job was around July 10, 2020. Claimant's immediate supervisor was Katia Correa. Claimant's hours depended on his availability and the availability of work.

Claimant was laid off due to the pandemic until approximately mid-May 2020. Claimant returned to work at that time and continued for approximately two months. On July 13, 2020, claimant informed Correa that he was awaiting the results of a COVID-19 test. Correa reached back out to claimant on or about July 30, 2020, to check on his status and offer work. Claimant asked if he could pick up some hours in a few weeks. Correa replied that was up to him, and claimant indicated he would "let [her] know asap" as to his return status.

Claimant did not follow up with Correa as to his return status as he promised. As a result, claimant was moved to inactive status approximately four weeks later. When claimant learned he had been moved to inactive status he assumed this meant he had been discharged. He did not reach out to employer to ask if he had been discharged or to express an interest in returning to work after that time. Claimant did not reach out to return because he felt "betrayed" by employer moving him to inactive status and instead chose to search for work elsewhere. However, he did not secure work elsewhere.

The unemployment insurance system shows claimant has received regular, state unemployment insurance benefits in the amount of \$1,013.41 since the date of separation, from the benefit week ending July 18, 2020 and continuing through the benefit week ending August 22, 2020.

Claimant also received Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$192.00 per week for a total of 37 weeks, from the benefit week ending August 29, 2020 and continuing through the benefit week ending November 21, 2020; and again from the benefit week ending January 2, 2021 through the benefit week ending June 12, 2021. The total amount of PEUC paid is \$7,104.00.

Claimant received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$600.00 per week in the weeks ending July 18 and July 25, 2020. He also received FPUC in the amount of \$300.00 per week from the benefit week ending January 2, 2021 and continuing through the benefit week ending June 12, 2021. The total amount of FPUC paid during that period is \$7,200.00.

Claimant received Lost Wage Assistance Payments (LWAP) in the amount of \$300.00 per week for a total of six weeks, from the benefit week ending August 1, 2020 and continuing through the benefit week ending September 5, 2020. The total amount of LWAP paid is \$1,800.00.

The administrative record indicates employer was not notified of a fact-finding interview prior to the decision appealed being issued. Draper would typically participate in such matters and he does not recall receiving any request for information from the department prior to the decision being issued.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the March 30, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was laid off on July 13, 2020 due to a lack of work is REVERSED.

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

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 r. 871-24.25 provides in relevant part:

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:

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

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).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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. Claimant was not discharged, and his assumption that he was due to being moved to inactive status was not reasonable. Furthermore, his decision not to follow up for clarification as to whether he had been discharged or to request continued work when there was clearly work available for him constitutes a voluntary separation from employment. While the administrative law judge understands claimant felt slighted by employer, a reasonable person would not find the working conditions so intolerable or detrimental as to justify resignation.

Claimant's resignation is best described as being due to a dissatisfaction with the work environment. This reason is presumed to be without good cause attributable to employer and the administrative law judge finds it was without such good cause here. Claimant is therefore disqualified from benefits from the date of separation.

- 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.

The unemployment insurance system shows claimant has received regular, state unemployment insurance benefits in the amount of \$1,013.41 since the date of separation, from the benefit week ending July 18, 2020 and continuing through the benefit week ending August 22, 2020. Because the administrative law judge now finds claimant disqualified from benefits from the date of separation, he has been overpaid benefits in that amount.

Because employer did not participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant. However, because employer's failure to participate was due to no fault of its own, it shall not be charged for benefits paid. The overpayment shall instead be charged due to unemployment insurance compensation fund.

III. Is the claimant eligible for PEUC, FPUC, or LWAP?

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(a) **FEDERAL-STATE AGREEMENTS.—**

(1) **IN GENERAL.** — Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(2) **PROVISIONS OF AGREEMENT.—** Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(3) EXHAUSTION OF BENEFITS.—For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(B) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

To be eligible for PEUC, a claimant must (1) have exhausted all rights to regular compensation under the State law or under Federal law with response to a benefit year and (2) have no rights to regular compensation under such law or any other State unemployment compensation law or to compensation under any other Federal law. The claimant must also be able to work, available for work, and actively seeking work. The claimant is deemed to have exhausted rights to regular compensation under a State law when no payments of regular compensation can be made under such law because the claimant has received all regular compensation available based on base period wages and/or wages.

Claimant also received Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$192.00 per week for a total of 37 weeks, from the benefit week ending August 29, 2020 and continuing through the benefit week ending November 21, 2020; and again from the benefit week ending January 2, 2021 through the benefit week ending June 12, 2021. The total amount of PEUC paid is \$7,104.00.

Because the administrative law judge finds claimant disqualified from benefits from the date of separation, he did not exhaust his rights to regular compensation and was therefore ineligible for PEUC. He has therefore been overpaid PEUC in the amount of \$7,104.00.

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...

Claimant received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$600.00 per week in the weeks ending July 18 and July 25, 2020. He also received FPUC in the amount of \$300.00 per week from the benefit week ending January 2, 2021 and continuing through the benefit week ending June 12, 2021. The total amount of FPUC paid during that period is \$7,200.00.

Because the administrative law judge finds claimant was not eligible for regular, state unemployment insurance benefits or PEUC after the date of separation, he was not eligible for FPUC during that period either. He has therefore been overpaid FPUC in the amount of \$7,200.00.

The Lost Wage Assistance Program was created by Executive Order 8, signed by President Trump on August 8, 2020. To receive LWAP in any given week, a claimant must be eligible to receive at least \$100.00 in unemployment benefits per week, and the individual must self-certify that he or she is unemployed or partially unemployed as a result of the COVID-19 pandemic.

Claimant received Lost Wage Assistance Payments (LWAP) in the amount of \$300.00 per week for a total of six weeks, from the benefit week ending August 1, 2020 and continuing through the benefit week ending September 5, 2020. The total amount of LWAP paid is \$1,800.00.

Because the administrative law judge finds claimant was not eligible for regular, state unemployment insurance benefits or PEUC after the date of separation, he was not eligible for LWAP during that period either. He has therefore been overpaid LWAP in the amount of \$1,800.00.

The administrative law judge wishes to note that claimant may request a waiver of the FPUC and/or PEUC overpayment amounts. Directions for doing so are set forth below.

DECISION:

The March 30, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was laid off on July 13, 2020 due to a lack of work is REVERSED. Claimant's separation from employment was disqualifying. Benefits are therefore denied from the date of separation and continuing until he earns wages for insured work equal to ten times his weekly benefit amount, provided he is not otherwise disqualified or ineligible at that time.

Claimant has been overpaid regular, state unemployment insurance benefits in the amount of \$1,013.41. For the reasons set forth above, benefits shall not be recovered and employer shall not be charged.

Claimant has been overpaid FPUC in the amount of \$7,200.00; PEUC in the amount of \$7,104.00; and LWAP in the amount of \$1,800.00. Those amounts are subject to recovery.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 22, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If this decision determines you have been overpaid FPUC and/or PEUC, you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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>.