

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROBERT L LYONS**  
Claimant

**SAC & FOX TRIBE**  
Employer

**APPEAL 20A-UI-05030-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Respondent (2)**

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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  
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On June 1, 2020, Sac & Fox Tribe (employer) filed an appeal from the May 22, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Robert L. Lyons (claimant) voluntarily quit due to compelling personal reasons which is good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2020. The claimant participated personally. The employer participated through Daniel Campbell, Human Resources Director. The Claimant's Exhibits A through D and the Employer's Exhibits 1 through 3 were admitted into the record with out objection. The administrative law judge took official notice of the claimant's claim history.

**ISSUES:**

Did the claimant voluntarily quit the employment with good cause attributable to the employer?  
Has the claimant been overpaid regular unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Has the claimant been overpaid Federal Pandemic Unemployment Compensation (FPUC) and, if so, must he repay those benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Internal Auditor beginning on May 7, 2018, and was separated from employment on March 10, 2020, when he quit.

The claimant had ongoing medical issues that began in January 2020. He was absent from work due to influenza from March 3 through March 6. The claimant's doctor released him to return to work on March 9. The claimant provided the doctor's excuse to the employer. The claimant's doctor did not advise him to quit employment.

On March 9, the claimant reported to work but had already decided, during his morning commute, to resign. The claimant was still experiencing a cough and work-related stress. He spoke with his supervisor about the situation and notified him of his resignation. The following day, the claimant issued a formal resignation to the Gaming Commissioners. On March 10, the employer had continuing work available for the claimant had he not resigned.

The claimant filed his claim for benefits effective April 12, 2020. He has received \$5,772.00 in regular unemployment benefits and \$7,200.00 in FPUC for the twelve weeks between April 12 and July 4. On April 20, Iowa Workforce Development (IWD) mailed a notice of claim to the employer. The employer's representative protested the claim and provided her phone number for the fact-finding interview.

On April 30, IWD mailed a notice of fact-finding to both parties, which included the phone number where the IWD representative would contact the employer on May 19. The number was the employer's regular phone number and not the phone number identified on the notice of claim. However, the notice of fact-finding advises the parties to "[r]eview your contact information and contact the agency if it is incorrect." (Exhibit 1) The employer received the notice of fact-finding on May 14 and did not notify the agency that the phone number on the notice was incorrect.

On May 19, the employer did not participate in the fact-finding interview. The IWD representative tried contacting the employer's representative at the phone number identified on the fact-finding notice. However, this was the employer's general phone line that went unanswered because the employer's business was closed pursuant to Governor Reynold's executive order closing all casinos. The employer's representative did not contact IWD when she did not receive a call nor did she submit any documentation for the fact-finding interview.

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

- I. Did the claimant voluntarily quit the employment with good cause attributable to the employer?*

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

Iowa Code section 96.5(1) provides, in relevant part:

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.

...

- d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the

individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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

...

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

...

(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.

Iowa Admin. Code r. 871-24.26(6) provides, in relevant part:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The 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, if the claimant's illness was work-related, he did not leave at the advice of his physician. If the illness was not work-related, the claimant's physician released him to return to work and the employer allowed him to return to work. The claimant's argument that he left because he was about to be fired due to attendance issues related to illness is not persuasive. Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. The employer had not discharged the claimant and it had continuing work available for him at the time he separated from employment. While the claimant's decision to leave employment may have been for good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Regular unemployment insurance benefits must be denied.

II. *Has the claimant been overpaid regular unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?*

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid regular unemployment benefits, but he does not have to repay those benefits. The employer failed to participate in the fact-finding interview and its account shall be charged.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

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.

(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(1) 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, regular benefits were paid to which he was not entitled. 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 employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

In this case, the claimant has received regular benefits in the amount of \$5,772.00 but was not eligible for those benefits. The employer failed to participate in the fact-finding interview via live testimony or documentation. While, initially, there was agency error regarding the employer's phone number, the employer had notice of the error prior to the fact-finding interview and did not take any steps to correct the error. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits he received and the employer's account shall be charged.

*III. Has the claimant been overpaid Federal Pandemic Unemployment Compensation (FPUC) and, if so, must he repay those benefits?*

For the reasons that follow, the administrative law judge concludes claimant was not eligible for FPUC and was overpaid federal benefits, which must be repaid.

PL116-136, Sec. 2104 provides, in pertinent part:

**EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.**

**(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 benefits, he is also disqualified from receiving FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The claimant has been overpaid FPUC in the gross amount of \$7,200.00 for the twelve-week period between April 12 and July 4. He will be required to repay the FPUC received unless the Employment Appeal Board reverses this decision regarding the separation or he is found eligible for Pandemic Unemployment Assistance (PUA).

**DECISION:**

*Regular Unemployment Insurance Benefits Under State Law*

The May 22, 2020, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid \$5,772.00 in regular unemployment insurance benefits, but he is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview, and its account shall be charged for the regular benefits.

The claimant has been overpaid FPUC in the gross amount of \$7,200.00 for the twelve-week period between April 12 and July 4. He will be required to repay the FPUC received unless the Employment Appeal Board reverses this decision regarding the separation or he is found eligible for PUA.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page of the decision.



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Stephanie R. Callahan  
Administrative Law Judge

July 17, 2020  
Decision Dated and Mailed

src/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.