

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**COLLEEN A LAVELLE**  
Claimant

**IOWA CITY REGINA**  
Employer

**APPEAL 21A-UI-02222-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/20**  
**Claimant: Respondent (2R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 20, 2021, reference 04, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on September 4, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on March 2, 2021. The claimant participated and presented additional testimony through Erin Major and Loretta Lavelle. Paul Jahnke represented the employer and presented additional testimony through Celeste Vincent, Barbara Meyer, and Sandra Feeney. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant voluntary quit without good cause attributable to the employer.  
Whether the claimant was overpaid benefits.  
Whether the claimant is required to repay benefits.  
Whether the employer participated in the fact-finding interview.  
Whether the employer's account may be charged.

**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 Early Childhood Worker at the licensed preschool located within the Regina Elementary School in Iowa City from 2018 until September 8, 2020, when she voluntarily quit. On Friday, September 4, 2020, the claimant's supervisor met with the claimant for a performance review. During that meeting, the supervisor reminded the claimant of the need for the claimant to remain within her assigned work area so the preschool could adhere to the state-mandated staff-child ratio. During the meeting, the supervisor also raised concerns

about the claimant not adhering to the COVID-19 safety and social distancing protocol. The supervisor presented the written performance review for the claimant to acknowledge through her signature. The claimant erroneously jumped to the conclusion that the supervisor was discharging her from the employment. The claimant is a brain injury survivor, which factors in the claimant perception and judgment. The claimant declined to sign to acknowledge the performance review. The supervisor has the claimant accompany her to the elementary principal's office to further discuss the matter. The employer said nothing about discharging the claimant from the employment.

At the end of the meeting, the supervisor and principal asked the claimant whether she was able to return to her work duties for the remainder of day and the claimant advised she was. However, after the meeting disbanded, the claimant did not return to her work area. Instead, the claimant walked off the job. The supervisor discovered the claimant's earlier departure when she checked in with other staff who inquired about the claimant. The supervisor was concerned for the claimant and made multiple attempts to reach the claimant. The claimant did not respond.

The claimant did not appear for her next scheduled shift on Tuesday, September 8, 2020. Between 3:20 and 4:00 p.m. on that date, the claimant appeared unannounced at the principal's office. The principal invited the claimant to a discussion. The claimant provided the principal with a letter that referenced the claimant's brain injury, the claimant's regard for the welfare of the children left in her care. The claimant told the principal that the claimant was "not feeling the love" and "I think it's time to part." The employer had said nothing about discharging the claimant from the employment and had made no decision to discharge the claimant from the employment. The claimant left the workplace and did not return.

The claimant established an original claim for unemployment insurance benefits that was effective September 13, 2020. This employer is the sole base period employer. Iowa Workforce Development set the claimant's weekly benefit amount at \$375.00. The claimant received \$8,625.00 in regular benefits for the 23 weeks between September 13, 2020 and February 20, 2021.

In December 2020, the claimant completed a fact-finding interview questionnaire and requested a telephone fact-finding interview. The claimant erroneously asserted in the questionnaire that she had been asked to resign. Though this comported with the claimant's perception, it did not comport with what had actually occurred between September 4, 2020 and September 8, 2020. The Benefits Bureau subsequently scheduled a fact-finding interview for January 13, 2021. On January 5, 2020, the employer submitted written notice to the Benefits Bureau that Sandra Feeney, Business Manager, would represent the employer at the fact-finding interview and provided a telephone number where Ms. Feeney could be reached. However, prior to any fact-finding interview, an Iowa Workforce Development Benefits Bureau deputy entered a January 4, 2021, reference 01, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on September 4, 2020 for no disqualifying reason. The Benefits Bureau did not contact the employer for the January 13, 2021 fact-finding interview. On January 20, 2021, a Benefits Bureau deputy entered the reference 04 decision, ostensibly as a replacement for the January 4, 2021, reference 01, decision. The reference 04 decision allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on September 4, 2020 for no disqualifying reason.

## 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 in the record establishes that the claimant voluntarily quit and was not discharged. The employer's presentation of the performance review for the claimant's signature was not a discharge. The employer did not mention discharge either during the performance review meeting or the subsequent two meetings involving the principal. On the contrary, the claimant walked off the job on September 4, 2020, failed to appear for her shift on September 8, and then told the employer later that day that it was time to part ways.

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 pertinent part, as follows:

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.
- (22) The claimant left because of a personality conflict with the supervisor.
- ...
- (27) The claimant left rather than perform the assigned work as instructed.
- (28) The claimant left after being reprimanded.

The evidence in the record establishes a September 8, 2020 voluntary quit that was without good cause attributable to the employer. The claimant left due to dissatisfaction the work rules the employer reinforced on September 4, 2020, because she did not care to work under her supervisor, and in response to the performance evaluation that she perceived as a reprimand. The claimant is disqualified for benefits until the claimant has worked in and been paid wages

for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements.

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 § 96.3(7)(a) and (b).

The claimant received \$8,625.00 in regular benefits for the 23 weeks between September 13, 2020 and February 20, 2021, but this decision disqualifies the claimant for those benefits. The benefits the claimant received constitute an overpayment of benefits. The claimant did not receive benefits through fraud or willful misrepresentation. The employer did not participate in the finding interview, but was denied a reasonable opportunity to participate. The claimant is not required to repay the overpaid benefits. The employer's account will not be charged or benefits for the period beginning February 21, 2021. The employer's account will be relieved of liability for the overpaid benefits to the extent the law allows such relief to reimbursable employers.

**DECISION:**

The January 20, 2021, reference 04, decision is reversed. The claimant voluntarily quit the employment on September 8, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's 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 February 21, 2021. The claimant is overpaid \$8,625.00 in regular benefits for the 23 weeks between September 13, 2020 and February 20, 2021. The claimant is not required to repay the overpaid benefits. The employer's account will be relieved of liability for the overpaid benefits to the extent the law allows such relief to reimbursable employers.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision regarding FPUC benefits disbursed to the claimant.



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James E. Timberland  
Administrative Law Judge

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March 12, 2021  
Decision Dated and Mailed

jet/o

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you may be required to repay the FPUC benefits you have received.**