

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JIMMY (LAZARA) MURILLO**  
Claimant

**LEFEBVRE & SONS INC**  
Employer

**APPEAL 20A-UI-04604-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**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  
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the May 13, 2020 (reference 01) unemployment insurance decision that allowed benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 11, 2020. The claimant, Jimmy (Lazara) Murillo, did not participate. The employer, Lefebvre & Sons Inc., participated through witnesses Amy Berglund, Brian Kane and Jenni Hougham. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?  
Has the claimant been overpaid Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed beginning January 13, 2020 as a full-time heavy haul driver. His employment ended on February 25, 2020 when he voluntarily quit. Brian Kane was his direct supervisor.

On February 24, 2020, claimant drove an oversize load from Nebraska to Iowa outside the required hours. Drivers are restricted from driving oversize loads after 4:00 p.m. and the claimant was aware of that. When Mr. Kane went to claimant's house the following day to retrieve the load from him, he admitted to driving after dark. Claimant also admitted to hitting a dumpster with the load, causing damage. Claimant asked if he was going to be fired and Mr. Kane told him a decision had not been made yet. Claimant then tendered his verbal resignation and gave his company property to Mr. Kane.

Claimant's administrative records establish that he has not received any regular unemployment insurance benefits since filing his original claim because no weekly-continued claims for benefits have been filed. Claimant has not received any Federal Pandemic Unemployment Compensation benefits since filing his original claim for benefits effective April 5, 2020.

The employer did not participate in the fact-finding interview by telephone because it had the wrong telephone number listed with Iowa Workforce Development. The employer listed the correct telephone number on the statement of protest for Iowa Workforce Development to contact it at. See Exhibit 1. The employer also attached written documentation to the statement of protest regarding the claimant's separation from employment. See Exhibit 1.

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

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

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 had an intention to quit and carried out that intention by tendering a verbal resignation. As such, 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).

Iowa Admin. Code r. 871-24.25(28) 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. 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:

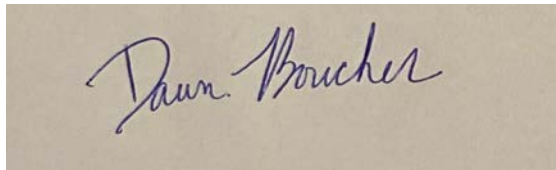
- (28) The claimant left after being reprimanded.

The claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied. Because benefits are denied, the issue of overpayment of benefits must be addressed. First, the employer sufficiently participated in the fact-finding interview by submitted detailed written documentation. However, because the claimant has failed to file any weekly-continued claims for benefits, no benefits have been paid to him. As such, the issues of overpayment of regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation are moot.

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and 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 due to disqualifying separations, 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>.

**DECISION:**

The May 13, 2020 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, slightly textured background.

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Dawn Boucher  
Administrative Law Judge

June 24, 2020  
Decision Dated and Mailed

db/scn

**NOTE TO EMPLOYER:** If you wish to change the address of record, please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>

Helpful information about using this site may be found at:  
<http://www.iowaworkforce.org/ui/uiemployers.htm>  
<http://www.youtube.com/watch?v=mpCM8FGQoY>