

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JEROME E BAILEY**

Claimant

**ABCM CORPORATION**

Employer

**APPEAL NO. 21A-UI-13712-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21**

**Claimant: Respondent (2)**

Iowa Code § 96.5-1- Voluntary Quit

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation or Lost Wages Assistance Program

871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated June 1, 2021, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 11, 2021. Claimant participated personally when called after the record had previously been closed. Employer participated by Jamie Harkema and Angie Hobscheidt. Employer's Exhibits 1-2 were admitted into evidence.

**ISSUES:**

Whether claimant voluntarily quit with cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

Is the claimant eligible for FPUC or LWAP benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 1, 2021. Claimant voluntarily quit on that date when he walked out in the middle of his shift as a cook.

Claimant worked as a full time cook for employer. Employer offered all employees a bonus for proof that they had been vaccinated against Covid. Claimant chose not to be vaccinated but still wanted his bonus. Employer explained that the bonus was given to employees who received vaccinations, claimant was upset.

Soon thereafter, employer was instituting a new policy where clients would put in their meal requests the day before meals were to be created. March 1, 2021 was the first day of the new policy. Claimant became frustrated in trying to adjust to the new policy. He walked out in the middle of his shift. Employer tried multiple times to speak with claimant after he walked out and claimant hung up on employer.

Employer filled out the written documentation for the fact finder, and asked to be called for a fact finding hearing. No call was ever made to employer. Employer's written documentation indicated claimant voluntarily quit out of frustration.

Claimant called in for the hearing approximately 10 minutes after the hearing had started. The administrative law judge had no notice of claimant's late registration until the record had been closed. The ALJ then recalled employer's witnesses and claimant to reopen the record. Claimant stated his listed address was correct. Later in the opening statement, the ALJ was explaining to claimant that he had not sent in exhibits, and claimant's statement that he didn't have notice was confusing in light of the fact that claimant had just stated his address was correct when asked. Claimant was talking while the ALJ was explaining, and the ALJ explained that parties would not be allowed to speak over one another. Claimant then hung up the phone. The ALJ called back, and stated that he did not appreciate the lack of respect and he would not participate in the hearing and just appeal the decision.

Claimant has received state unemployment benefits in the amount of \$2,619.35 as determined through IWD records.

Claimant has received Federal Pandemic Unemployment Compensation benefits in the amount of \$3,300.00 as determined through IWD records.

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

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.

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, except that the State agency may waive repayment if it determines that –

- (A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and
- (B) such repayment would be contrary to equity and good conscience.

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

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 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 administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was upset that he didn't get a bonus that was reserved for vaccinated employees and he was frustrated with the newly instituted changes in the menus for the clients at the nursing home. Claimant walked out during his shift and did not speak to employer when they attempted to call numerous times.

The overpayment issue was examined through IWD records. Claimant received state unemployment benefits in the amount of \$2,619.35, and FPUC benefits in the amount of \$3,300.00. Said payments are overpayments.

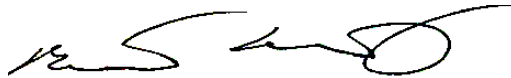
The issue of employer participation was addressed. Employer gave sufficient information such that a fact finder could have found for the employer based on information given. Additionally, employer requested a fact finding call be made to them. This was never done by an IWD representative.

**DECISION:**

The decision of the representative dated June 1, 2021, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant received state unemployment benefits in the amount of \$2,619.35, and FPUC benefits in the amount of \$3,300.00. Said payments are overpayments.

Employer substantially participated in fact finding to such an extent that employer's account should not be charged for the overpayments.



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Blair A. Bennett  
Administrative Law Judge

August 17, 2021  
Decision Dated and Mailed

bab/scn