

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROY BRYANT
Claimant

APPEAL 21A-UI-15157-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

**OC: 03/07/21
Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Quitting of Work
Iowa Code § 96.6(3) – Previously Adjudicated Issue
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 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 1, 2021 (reference 03) unemployment insurance decision that allowed benefits to the claimant and found that the employer's account may be chargeable based on a previously adjudicated separation from employment in a prior claim year. The parties were properly notified of the hearing. A telephone hearing was held on August 26, 2021. The claimant did not participate. The employer participated through witness Melissa Lewien. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was this separation from employment previously adjudicated in a prior claim year?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any regular 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?
Was the claimant overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits with an effective date of March 7, 2021. His base period established was the fourth quarter of 2019 through the third quarter of 2020. The claimant worked as a temporary employee at this temporary employment firm on four separate occasions.

Claimant's first period of employment occurred from September 15, 2020 through October 26, 2020 when he was placed on a job assignment with Continental Manufacturing as a full-time packaging technician. He completed that job assignment, requested reassignment, and was placed at Leviat. He worked at Leviat from October 28, 2020 through November 4, 2020 when

he voluntarily quit his employment to take a job elsewhere. There was continuing work available to the claimant if he had not quit that job assignment.

Claimant then returned to work for this employer from March 15, 2021 through March 26, 2021 working at a job assignment located at PDM. He worked there as a full-time laborer. He told the employer he did not like that position and was placed back at Continental Manufacturing. That job assignment with Continental Manufacturing began on March 29, 2021 and lasted until April 13, 2021 when the claimant stopped showing up for scheduled shifts. Continental Manufacturing reached out to the claimant to inquire why he was not showing up for work and on April 21, 2021 claimant explained that he received an emergency call regarding the health of his parent and he went to North Carolina. The claimant never contacted this employer to notify it that he was unable to work or any information about this emergency situation. Claimant never returned to this employer.

The employer has a written policy that states if an employee failed to call in or show up for work for three consecutive work days, they are considered to have voluntarily quit. See Exhibit 1. The employer also has a written policy stating that the employee must notify the employer within three business days of the end of a job assignment that they are seeking to be placed at another job assignment and that they are able to and available for work. See Exhibit 2. Claimant received a copy of both policies. See Exhibit 1 and 2.

Claimant's established weekly benefit amount was \$437.00. He filed weekly-continued claims for the week-ending March 13, 2021; April 24, 2021; and May 1, 2021. He was paid regular unemployment insurance benefits of \$1,270.00 for those three weeks. He was paid FPUC benefits of \$900.00 during those three weeks (\$300.00 per weekly-continued claim). No scheduled fact-finding interview was completed for the parties; however, a cold call was made to the employer regarding the separation from employment. Ms. Lewien participated in that fact-finding interview cold call and gave the interviewer information about the claimant voluntarily quitting work. Claimant's administrative records establish that claimant had not previously filed another original claim for benefits in a prior claim year. Claimant's administrative records establish that another unemployment insurance benefits decision was issued on April 6, 2021 (reference 02) for this same claim year of March 7, 2021 found that the claimant had earned ten times his weekly benefit amount in insured work since his disqualifying separation from this employer and that wage credits from October 1, 2019 through November 4, 2020 would be charged to the unemployment compensation fund. No other decisions regarding the claimant's separation from employment with this employer on April 13, 2021 had been issued.

Claimant's administrative records established that he earned wages from Iowa Department of Human Services/Woodward after his November 4, 2020 separation from employment with this employer. His fourth quarter of 2020 earnings with Iowa Department of Human Services/Woodward were \$5,593.00.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(3) provides:

3. Appeals.

a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the

provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The notice for a telephone or in-person hearing shall be sent to all the parties at least ten calendar days before the hearing date. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Iowa Admin. Code r. 871-24.19(1) provides:

Determination and review of benefit rights.

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner of taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

Iowa Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

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.

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In this case, the claimant had earned ten times his weekly benefit amount in insured wages from Iowa Department of Human Services/Woodward following his November 4, 2020 separation from employment with this employer. His original claim for benefits was established on March 7, 2021. He filed a weekly-continued claim for benefits for the week-ending March 13, 2021 and was paid benefits of \$396.00. Claimant then did not file another weekly-continued claim for benefits until the week-ending April 24, 2021; however, he had already separated from

employment with this employer at that time. Claimant again filed a weekly-continued claim for benefits for the week-ending May 1, 2021 and was paid \$437.00 in regular unemployment insurance benefits. Claimant also received FPUC benefits of \$600.00 for those two weeks ending April 24, 2021 and May 1, 2021.

Claimant clearly had an intention to quit and carried out that intention by never returning back to work. His separation from employment with this employer occurred on April 16, 2021, three days of no calls and no shows for his scheduled work. 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).

Claimant voluntarily quit his employment with the employer in order to move out of the State of Iowa due to personal issues, while failing to provide the employer notification of his absences for three days in violation of the employer's written policy. Claimant's voluntary quitting on April 16, 2021 was without good cause attributable to the employer. As such, benefits are denied effective April 16, 2021 due to the claimant's voluntary quitting of work. The benefits paid to him for the week-ending March 13, 2021 are allowed and the employer's account is not chargeable for those weekly benefits paid because the claimant had already earned ten times his weekly-benefit amount after his November 4, 2020 separation from employment with this employer and had not yet begun his most recent employment that began on March 29, 2021.

Effective April 16, 2021, the claimant's separation from employment was disqualifying and benefits are denied based upon that April 16, 2021 separation from employment. The issue of whether the claimant is overpaid regular unemployment insurance benefits and FPUC benefits for the week-ending April 24, 2021 and the week-ending May 1, 2021 must be addressed.

Iowa Code § 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.

Because the claimant's separation on April 16, 2021 was disqualifying, benefits were paid after that date 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 those 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).

In this case, the claimant has received benefits for the week-ending April 24, 2021 and May 1, 2021 but was not eligible for those benefits. Since the employer did sufficiently participate in the cold call fact-finding interview through Ms. Lewien 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 claimant is obligated to repay to the agency the regular unemployment insurance benefits he received for the week-ending April 24, 2021 and the week-ending May 1, 2021 totaling \$874.00, and this employer's account may not be charged for those benefits paid.

The claimant is not overpaid regular unemployment insurance benefits for the week-ending March 13, 2021 as those were paid prior to his April 16, 2021 disqualifying separation date. The employer's account may not be charged for those benefits paid for the week-ending March 13, 2021 as the decision dated April 5, 2021 (reference 02) found that the employer's account was not chargeable and benefits would be charged to the fund.

The next issue is whether the claimant was overpaid any FPUC benefits. The administrative law judge finds that he was overpaid FPUC benefits of \$600.00 which must be repaid to the agency.

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...

PL 116-136 Section 2104 of the CARES Act created a program in which an additional \$600.00 per week was payable to claimants who were eligible for at least \$1.00 per week in benefits stemming from other programs including regular unemployment insurance funded by the State of Iowa, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, Iowa Extended benefits, and Trade Act benefits. This initial program ran from March 29, 2020 through July 25, 2020. Claimants were only eligible to receive FPUC payments if they were entitled to receive benefits from another applicable program. The payments of FPUC benefits were automatic so long as a claimant was determined to be eligible under one of the other applicable programs. On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 203 reauthorized the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 and modified the weekly supplement payment to \$300.00. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). Section 9103 of ARPA amends Section 2104 of the CARES Act of 2020 and extended the FPUC program for weeks of unemployment ending on or before September 6, 2021. On May 11, 2021, Governor Reynolds announced that Iowa would end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for FPUC benefits in Iowa was the week ending June 12, 2021.

In this case, the claimant received FPUC benefits of \$300.00 per week for the week-ending March 13, 2021; April 24, 2021; and May 1, 2021. The FPUC benefits were paid in conjunction with and based upon his eligibility for regular unemployment insurance benefits funded by the State of Iowa. As soon as the claimant was disqualified from receipt of regular unemployment insurance benefits because of his April 16, 2021 disqualifying separation from employment, he was no longer eligible for FPUC benefits. As such, FPUC benefits are allowed for the week-ending March 13, 2021 as the claimant was eligible for regular benefits. The claimant is overpaid FPUC benefits for the two weeks ending April 24, 2021 and May 1, 2021 because the April 16, 2021 separation from employment has been now found to be disqualifying. Claimant must repay the agency the \$600.00 he received in FPUC benefits for those two weeks ending April 24, 2021 and May 1, 2021 unless a waiver is requested and granted.

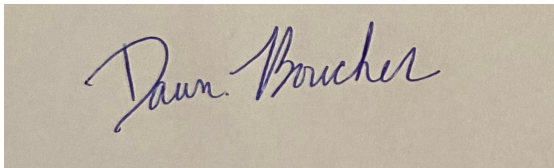
DECISION:

The July 1, 2021 (reference 03) unemployment insurance decision is modified in favor of the appellant/employer. Claimant voluntarily quit employment without good cause attributable to the employer on April 16, 2021. Unemployment insurance benefits funded by the State of Iowa are denied effective April 16, 2021 until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after his April 16, 2021 separation date, and provided he is otherwise eligible.

The claimant is overpaid regular unemployment insurance benefits funded by the State of Iowa for the two weeks ending April 24, 2021 and May 1, 2021 in the total amount of \$874.00. Those benefits must be repaid to the agency as the employer participated in the cold call fact-finding interview. The employer's account may not be charged for those benefits paid.

The claimant is overpaid FPUC benefits for the two weeks ending April 24, 2021 and May 1, 2021 in the total amount of \$600.00. Those benefits must be repaid to the agency unless an overpayment waiver is requested and granted.

The claimant is not overpaid regular unemployment insurance benefits for the week-ending March 13, 2021 as this disqualifying separation from employment on April 16, 2021 was not yet in existence. This employer's account may also not be charged for benefits paid for the week-ending March 13, 2021 pursuant to the claimant earning ten times his weekly-benefit amount in insured wages following his disqualifying November 4, 2020 separation from employment. Those benefits paid for the week-ending March 13, 2021 shall be charged to the fund. See unemployment insurance benefits decision issued on April 5, 2021 (reference 02).

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

August 30, 2021
Decision Dated and Mailed

db/kmj