

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M MCKASSON
Claimant

FARM KING SUPPLY INC
Employer

APPEAL 20A-UI-06173-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
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

STATEMENT OF THE CASE:

On June 17, 2020, Farm King Supply Inc. (employer/appellant) filed an appeal from the June 12, 2020 (reference 02) unemployment insurance decision that allowed benefits.

A telephone hearing was held on July 15, 2020. The parties were properly notified of the hearing. Employer participated by Operations Manager Jacki Lee. Store Manager Cliff Twitchel and Assistant Managers Amy Barngrover and Molly Dodgson participated as witnesses for employer. Claimant was not available when called at the number registered for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause? Did the claimant leave employment due to intolerable or detrimental working conditions?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time area manager. Claimant's first day of employment was October 31, 2011. The last day claimant worked on the job was May 5, 2020. Claimant's immediate supervisor was Assistant Manager Amy Barngrover. Claimant separated from employment on May 7, 2020. Claimant resigned on that date.

Claimant informed Barngrover and Assistant Manager Angie Crowell of her resignation. She said she was quitting due to sexual harassment. She did not state at that time when the sexual harassment happened. However, Barngrover assumed she was referring to an incident approximately a year earlier when claimant told her Twitchel had taken a phone out of claimant's back pocket. At that time, Barngrover told claimant she "should do something about it." Barngrover did not report claimant's allegations to other management or otherwise investigate them at that time. However, this time she reported claimant's allegation to Twitchel, who in turn reported it to Lee.

Employer's sexual harassment policy is contained in its employee manual, which claimant was aware of. It directs employees to bring any claim of sexual harassment to their immediate supervisor and then to a higher-level supervisor if the response from the immediate supervisor is not satisfactory. Neither Barngrover nor any other member of management heard anything further from claimant about this allegation until she quit approximately a year later. Twitchel does not recall ever taking a phone from claimant's back pocket and further denies ever engaging in inappropriate behavior toward claimant. Barngrover and Dogson deny ever witnessing sexual harassment at work or the specific incident claimant complained of. Employer did not formally investigate claimant's allegations after she resigned.

Claimant also indicated she was resigning because she had found other employment. However, it is unclear whether she was offered and accepted such employment and performed work in it. It is also unclear whether she has earned wages for insured work equal to ten times her weekly benefit amount subsequent to resigning.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$2,849.00 since resigning. She has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$6,600.00 during that timeframe.

Barngrover and Crowell participated in the fact-finding hearing on behalf of employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the June 12, 2020 (reference 02) unemployment insurance decision that allowed benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

- a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This

paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26 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:

(4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant has not established that she resigned due to intolerable or detrimental working conditions, as alleged at the time she quit. The evidence received indicates the incident she complained of did not occur. Even if it did occur as alleged, it is questionable whether it would rise to the level of intolerable or detrimental. Claimant's determination to continue working for approximately a year after the alleged incident occurred without raising the incident further and then to quit without notice suggests a reasonable person may not have found it so intolerable or

detrimental as to justify resignation. While it appears Barngrover should have reported claimant's allegations when she first learned of them and failed to do so, claimant was also aware of the policy and her ability to elevate the complaint if she was dissatisfied with Barngrover's response.

Regardless of the appropriateness of employer's response, there is simply not enough evidence to show claimant's working conditions were intolerable or detrimental. There is also not enough evidence to show claimant quit to accept other employment, which she did accept and performed work in. Finally, it is also unclear whether she has earned wages for insured work equal to ten times her weekly benefit amount subsequent to resigning. As such, benefits must be denied.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

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.

(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.

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.

Because the administrative law judge now finds claimant disqualified from benefits, she has been overpaid benefits in the amount of \$2,849.00. Because employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall be recovered from claimant. 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.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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...


Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$6,600.00. Claimant is required to repay those benefits.

DECISION:

The June 12, 2020 (reference 02) unemployment insurance decision that allowed benefits is REVERSED. Claimant is disqualified from benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$2,849.00. Because employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall be recovered from claimant. 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.

Claimant has been overpaid FPUC benefits in the amount of \$6,600.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 22, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.