

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE CONARD
Claimant

APPEAL 21A-UI-00189-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGINE THE POSSIBILITIES INC
Employer

**OC: 07/26/20
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Imagine The Possibilities Inc., the employer/appellant, filed an appeal from the November 9, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 4, 2021. The employer participated through Wendy Davis, director of human resources for western Iowa. Ms. Conard participated and testified. Official notice was taken of the administrative record.

ISSUE:

Did Ms. Conard voluntarily quit without good cause attributable to the employer?
Was Ms. Conard overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Conard began working for the employer on October 27, 2019. She worked as a full time direct care staff. Her last day of work was July 31, 2020.

In October 2019, the employer bought out the previous owner of the company. The previous owner went into bankruptcy. Ms. Conard's vacation time that she had accrued working for the previous owner did not transfer to the new owner, the employer in this matter. Ms. Conard, and all of the other employees, became brand new employees of the employer in this matter.

The new employer, the employer in this matter, instituted several changes due to their own processes and policies and due limited available staff because of the COVID-19 pandemic. The primary changes that impacted Ms. Conard were: the employer requiring employees to work more hours, and the employer changing employees' hours per the contract of hire that provides

that employees are expected to work different hours and at different sites when business needs arise.

Prior to the changes, Ms. Conard worked Monday-Friday, 8:00 a.m. – 4:00 p.m. and occasionally on Saturday with advance notice. These hours worked for Ms. Conard given her family and childcare needs. After Ms. Conard became an employee of the employer in this matter, due to the COVID-19 pandemic and short staffing, Ms. Conard worked 14 days in a row with no days off. Ms. Conard was frustrated that her manager was not helping her with her job as they had done before. Unbeknownst to Ms. Conard, her manager was not able to help her because the manager was off of work due to the COVID-19 pandemic and an injury. Ms. Conard was also frustrated because she had not had a raise in two years.

Ms. Conard spoke with Ms. Davis and Ms. Davis' manager about these issues. Both Ms. Davis and Ms. Davis' manager told Ms. Conard that she would have to work these issues out with her manager.

In late July 2020, Ms. Conard spoke with Ms. Davis and requested time off. Ms. Conard did not have any PTO hours. Ms. Davis told Ms. Conard that Ms. Conard would have to discuss the matter with Ms. Conard's manager to see if she could take unpaid time off. Ms. Conard was frustrated because the employer did not make the August 2020 monthly schedule available until July 31. The schedule had usually been available by the 15th of the prior month for the upcoming month. Ms. Conard could not work the hours she was scheduled on the August schedule due to her family and childcare needs.

On August 1, Ms. Conard resigned effective July 31, by sending her manager a text message to her manager saying she quit. The reasons Ms. Conard gave were long hours, verbal abuse from clients, no pay raise for two years, no support from management and the short notice of schedule changes does not work well with her family and childcare needs.

Ms. Conard began new employment on February 1, 2020.

Ms. Conard has received \$8,284.91 in REGULAR unemployment insurance (UI) benefits from July 26, 2020 through January 30, 2021. Ms. Conard received \$1,500.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits from January 3, 2020 through January 26, 2021.

The employer had the opportunity to and participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Conard's separation from the employment was without good cause attributable to the employer.

Iowa Code section 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(13), (18), (21) and (37) provide:

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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(18) The claimant left because of a dislike of the shift worked.

(21) The claimant left because of dissatisfaction with the work environment.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Iowa Admin. Code r. 871-24.26(4) provides:

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). "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). 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).

If the claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. However, the claimant must prove that her working conditions were intolerable or detrimental.

In this case, it is undisputed that things changed when the employer in this matter took over in October 2019. That was in part due to the COVID-19 pandemic and in part due to the employer changing things as the new employer. Ms. Conard was dissatisfied with the hours and shifts. She was dissatisfied that she hadn't gotten a pay raise in two year and that her vacation hours from the previous employer did not transfer to the employer in this matter. Ms. Conard was dissatisfied that her manager was no longer helping her and she was tired of the verbal abuse

from clients. While Ms. Conard's leaving may have been based upon good personal reasons, the described conditions are not intolerable or detrimental enough to be good cause attributable to the employer.

As such, Ms. Conard's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

The administrative law judge further concludes Ms. Conard has been overpaid REGULAR UI benefits in the amount of \$8,284.91, she has been overpaid FPUC benefits in the amount of \$1,500.00 and these benefits should be repaid.

Iowa Code §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.

(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.

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...

Ms. Conard has been overpaid REGULAR UI benefits in the amount of \$8,284.91 as she was not qualified and/or was ineligible to receive REGULAR UI benefits.

Because Ms. Conard is disqualified from receiving regular UI benefits, she is also disqualified from receiving FPUC benefits. While Iowa law does not require a claimant to repay regular UI benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC benefits. Therefore, the determination of whether Ms. Conard must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that Ms. Conard has been overpaid FPUC benefits in the gross amount of \$1,500.00.

DECISION:

The November 9, 2020, (reference 01) unemployment insurance decision is reversed. Ms. Conard voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Ms. Conard has been overpaid REGULAR UI benefits in the amount of \$8,284.91 and overpaid FPUC benefits in the amount of \$1,500.00 for a total of \$9,784.91, which must be repaid.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 22, 2021
Decision Dated and Mailed

dz/mh