

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKIE L RAILEY
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-14426-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (2R)

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, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the June 14, 2021 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 19, 2021, at 1:00 p.m. Claimant participated. Employer participated through Erin Bewley, Hearing Representative, and Sean Milbrandt, Manager. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation or Lost Wage Assistance.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Cashier from August 29, 2020 until her employment with Hy-Vee ended on October 19, 2020, when claimant quit her employment with Hy-Vee for personal reasons and to quarantine due to Covid-19 upon the advice of a healthcare provider. Employer had work available for claimant. Claimant's job was not in jeopardy.

The administrative record reflects that claimant received no regular unemployment insurance (UI) benefits or Lost Wage Assistance (LWA) after October 17, 2020.

Claimant received Pandemic Emergency Unemployment Compensation (PEUC) benefits from October 18, 2020 until March 20, 2021.

Claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$3,600.00 for the 12-week period between December 27, 2020 and March 30, 2021 based upon her eligibility for PEUC benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Iowa Admin. Code r. 871-24.25(20), (23) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and

deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. Id.

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than claimant's testimony. Specifically, claimant could not provide details regarding her communication with employer including the date and time of the conversations and with whom she spoke. It is incredible that claimant did not speak with her direct supervisor when she informed employer that she would be absent for an indefinite period of time.

Claimant quit her employment for personal and family reasons. While claimant may have had a good reason to quit her employment, the reason is not attributable to employer. Therefore, claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied.

Because claimant did not receive UI benefits or LWA after the disqualifying separation, the issue of overpayment of those benefits is moot. Because claimant did not receive UI benefits, the issue of chargeability is moot.

The issue of whether claimant has been overpaid PEUC benefits should be remanded to the Benefits Bureau for an initial investigation and decision. The issue of whether claimant was overpaid FPUC (based upon her eligibility for PEUC benefits) is reserved pending the outcome of the PEUC overpayment issue that will be remanded for investigation and decision.

DECISION:

The June 14, 2021 (reference 03) unemployment insurance decision is reversed. Claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied 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.

The issues of overpayment and repayment of UI and LWA are moot. The issue of chargeability is moot. The issue of overpayment of FPUC is reserved pending the outcome of the PEUC overpayment issue that is remanded for investigation and decision.

REMAND:

The issue of whether claimant is overpaid PEUC is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and decision.

A handwritten signature in cursive script, appearing to read 'Adrienne C. Williamson', is written in black ink on a white background.

Adrienne C. Williamson
Administrative Law Judge

Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 25, 2021
Decision Dated and Mailed

acw/ol

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If 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, but who are unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.