

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SUMMER D FISHER**

Claimant

**APPEAL 20A-UI-09706-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA WESTERN COMM COLL MERGED AREA**

Employer

**OC: 03/29/20**

**Claimant: Respondent (4R)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the July 29, 2020 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her separation from employment and found that the employer's account may be charged for benefits paid. The parties were properly notified of the hearing. A telephone hearing was held on September 29, 2020. The claimant, Summer D. Fisher, did not participate. The employer, IA Western Comm Coll Merged Area, participated through witness Robyn Porter. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Did the claimant voluntarily quit without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

Has the claimant been overpaid Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time beginning March 9, 2020 and ending June 5, 2020. Upon her hire, the claimant was instructed that the job would end on June 5, 2020. See Exhibit 1. The claimant worked full-time Monday through Friday from 8:00 a.m. to 4:30 p.m. Her job title was temporary work experience and her supervisor was Kaylene Page.

Claimant has received \$0.00 in gross unemployment insurance benefits since filing her additional claim for benefits effective May 31, 2020 as she has not filed any weekly-continued claims for benefits. Claimant has also received \$0.00 in Federal Pandemic Unemployment Compensation benefits.

The employer indicated that it received a grant through a program with Iowa Workforce Development to have the claimant work for the period of time listed in her contract. Whether the employer's account may be charged in the future for any benefits paid shall be remanded to the Tax Bureau for an initial investigation and determination.

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

For the reasons that follow, the administrative law judge concludes the claimant's separation from employment was not disqualifying.

Generally, the employer bears the burden of proving disqualification of a claimant who voluntarily quits. Iowa Code § 96.6(2). The employer also bears the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 210 (Iowa 2016). If a claimant has voluntarily quit, the claimant has "the burden of proving that a voluntary quit pursuant to Iowa Code § 96.5(1) was for good cause attributable to the employer." Iowa Code § 96.6(2). Since the employer has the burden of proving disqualification and the claimant only has the burden of proving the justification for a quit, the employer has the burden of proving that a particular separation is a quit.

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.

A quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." Iowa Admin. Code r. 871-24.1(113)(b).

Iowa Admin. Code r. 871-24.25 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.

"[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), see also *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

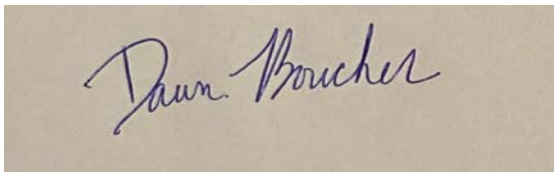
In this case, both parties agreed that they would be working together until June 5, 2020 pursuant to Exhibit 1. The greater weight of evidence fails to establish that the claimant intended to quit, but rather that she completed the term of her contract of hire. Thus, she cannot be found to have quit under Iowa Admin. Code r. 871-24.25. As such, the claimant is not disqualified by the separation from employment under the circumstances of this case. See Iowa Admin. Code r. 871-24.1. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment of benefits and overpayment of Federal Pandemic Unemployment Compensation benefits are moot. The chargeability issue delineated in the Findings of Fact will be remanded to the Tax Bureau for an initial investigation and determination.

**DECISION:**

The July 29, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant's separation from employment with this employer is not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:**

The issue of whether the employer's account may be subject to any charges is remanded to the Tax Bureau for an initial investigation and determination.

A handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

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Dawn Boucher  
Administrative Law Judge

September 30, 2020  
Decision Dated and Mailed

db/scn