

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**NIKKI L ATKINSON**  
Claimant

**MIDLAND COMMUNITY SCHOOL DISTRICT**  
Employer

**APPEAL NO. 20R-UI-04687-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-1-a – Voluntary Quit  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits  
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation  
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 31, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 16, 2020. Claimant participated personally. Employer participated by Megan Frankfurt and Carole Gunther.

**ISSUES:**

Whether claimant voluntarily quit with good cause attributable to employer?

Whether claimant was overpaid benefits?

Whether claimant is eligible for FPUC benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer under the agreement signed in 2019 on December 6, 2019. Claimant voluntarily quit on that day as employer took away a good portion of claimant's income when employer moved claimant's para-professional position from caring for a particular individual to being a general para-professional.

As a part of claimant being moved from the position she was given at the beginning of the year, claimant's daily driving duties – and the income generated therefrom – was cancelled and claimant was instead moved to substitute driving status.

Claimant has worked as a para-professional for employer since 2011. For the last three years, claimant has been driving students to and from school as a portion of her duties. (Claimant signed a para-professional contract each year, but did not sign a contract for the driving portion of her work.) Claimant earned approximately \$6000.00 in 2017 while driving, \$6186.00 driving in 2018, and \$6677.00 driving in 2019. In May 2019 claimant and employer signed off on a contract for the 2019-2020 school year. After this contract was signed, employer decided that they did not need claimant to do the job she had done for years with an elementary school. Claimant offered to resign her position. Employer asked claimant to drive a child to and from school and provide him assistance during the school day. This continued for a number of weeks until the child had problems and claimant was no longer asked to transport the child.

Instead, employer asked claimant to be placed as a substitute for driving and keep her para-professional position in some capacity. Claimant quit her position, as she was not promised any driving money after that time as was therefore not guaranteed any more money.

After claimant's quit, she was asked to and did substitute as a driver for 9 days over the next two months.

Employer argues that claimant was not guaranteed any days driving, even though she had consistently done so for years. As such, any loss of money does not constitute good cause for her quit.

Claimant has received state unemployment benefits in this matter in the amount of \$4620.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter in the amount of \$5400.00.

Employer did not substantially participate in fact finding in this matter.

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

Iowa Code section 96.5(1) 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.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was asked to eliminate a major source of her income in the middle of the school year even though claimant had become accustomed to the additional driving income through multiple years of consistent payments for the actions.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination."

*Id.* In this matter claimant made at least \$6000.00 in income and was proceeding to make that amount again for a fourth year from employer. Through no fault on the part of claimant, employer chose to take away a large chunk of claimant's income. Although it is understandable that claimant did not have a specific everyday driving job after the child was no longer in the school system, it is also not claimant's fault to have a large source of income taken from her in the middle of the school year. Although there was no written contract between the parties regarding the driving, a reasonable expectation of ongoing income on or around the same amount as earned in past years was created through the years of consistent service and money earned.

Iowa Code section 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.

The overpayment issue is moot, as claimant is eligible to receive unemployment benefits.

The issue of employer participation is moot.

**DECISION:**

The decision of the representative dated March 31, 2020, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

June 30, 2020  
Decision Dated and Mailed

bab/sam