

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARSON HILES
Claimant

THOMAS L CARDELLA & ASSOCIATES INC
Employer

APPEAL 20A-UI-02358-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The claimant/appellant, Garson Hiles, filed an appeal from the March 11, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A first hearing was scheduled for April 2, 2020 but postponed at the Agency’s request. After proper notice, a second telephone hearing was scheduled for April 28, 2020. At the time of hearing, claimant requested a postponement, and both parties waived notice for a May 4, 2020 hearing. A telephone hearing was held on May 4, 2020. The claimant participated personally. Arianna Hiles, wife and former co-worker of claimant, also testified. The employer, Thomas L. Cardella and Associates did not participate. Myka Gilchrist was called at two available numbers, but was unavailable when called. She did not respond to voicemail while the hearing was being conducted.

The issue of possible overpayment of regular benefits and also of Federal Pandemic Unemployment Compensation (FPUC) benefits was identified but not properly noticed. The claimant waived proper notice.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the claimant overpaid benefits?
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: The claimant was employed full-time as a call center customer service representative and was

separated from employment on February 20, 2020, when he quit. Continuing work was available.

The claimant voluntarily quit without proper notice. He quit due to work conditions, which deteriorated after he reported sexual harassment by an employer subcontractor. The claimant initially complained in August 2019. The subcontracted employee had made repeated comments about his appearance and suggested he come over for a one night sexual encounter. At one point, the other employee physically attacked the claimant's wife (who was a co-worker) in a Dollar Tree parking lot outside of work. After reporting his concerns to human resources, the comments continued. The claimant continued to report them until human resources told the claimant she was tired of hearing about it and cursed at him. He then went over her head and reported concerns to the HR manager, who agreed to come to the office and meet with the claimant. On that day, the claimant's wife overheard management mocking the claimant for his complaints, which caused him to tender his resignation.

Despite being denied benefits at initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The administrative record shows, claimant filed for and received a total of \$1,678.00 in unemployment insurance benefits since filing his claim. The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$3,000.00 in federal benefits for the five week period ending May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed.

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 claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

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. Iowa Dep't 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 element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be “attributable to the employer,” a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting “attributable to the employer.”

An employee has the right to work in an environment free from unwanted sexual propositions, as well as insensitive and hurtful comments. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the harassment. Here, the claimant’s human resources representative dismissed his concerns, and he was mocked by management after notifying management of continuing issues related to a coworker.

Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. The claimant has established good cause for quitting. Benefits are allowed, provided he is otherwise eligible.

As claimant has been receiving benefits, pending a determination on his appeal, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

Since the decision disqualifying the claimant has been reversed the claimant was not overpaid \$1,678.00 in unemployment insurance benefits.

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...

Here, the claimant is allowed to receive regular unemployment insurance (UI) benefits. Accordingly, this also allows claimant to receive Federal Pandemic Unemployment Compensation (FPUC). Claimant has not been overpaid \$3,000.00 in FPUC.

DECISION:

The unemployment insurance decision dated March 11, 2020 (reference 01) is reversed. The claimant voluntarily quit with good cause. Benefits are allowed, provided he is otherwise eligible. The claimant has not been overpaid benefits.



Jennifer L. Beckman
Administrative Law Judge
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May 18, 2020
Decision Dated and Mailed

jlb/mh