

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DEBBIE J SHANNON**  
Claimant

**JON L HARDINGER DDS**  
Employer

**APPEAL 20A-UI-03867-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment of Benefits  
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the April 30, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2020. The claimant, Debbie J. Shannon, participated personally. The employer, Jon L. Hardinger DDS, participated through witness Jon L. Hardinger. The administrative law judge took official notice of the claimant's administrative records.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Is the claimant overpaid benefits?  
Is the claimant 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 as a dental assistant. She began working for the employer on September 6, 2019. Dr. Hardinger was her immediate supervisor. She voluntarily quit on March 19, 2020 by tendering a written resignation to Dr. Hardinger. Claimant's last day physically worked on the job was Friday, March 13, 2020.

Claimant felt that her working conditions were unsafe due to the Coronavirus pandemic and her risk of possible infection. Claimant's husband is a higher risk person due to his previous medical issues. On March 15, 2020, the minor child that the claimant is a guardian for was instructed to self-isolate due to possible exposure to the Coronavirus. Claimant did not work Monday, March 16, 2020 or Tuesday, March 17, 2020. She stopped into the office on Monday, March 16, 2020 to speak with Dr. Hardinger about her concerns over the lack of policies regarding treatment of patients and protection of workers from infectious diseases. Claimant refused to attend the staff meeting where Dr. Hardinger was presenting information to his staff

about a recent meeting he listened to discussing proper safety protocols regarding the Coronavirus. Dr. Hardinger gave the claimant a copy of his notes from the meeting prior to her leaving on Monday, March 16, 2020. Claimant claims that Dr. Hardinger asked the claimant to re-use her disposable mask. He did not. Claimant had gloves, masks, and a face shield available for her use with patients. Claimant had access to cleaning supplies to clean the facility area before and after patient care.

Claimant had complained about favoritism in the workplace in the past when she felt that she was having to work more than a co-worker. Because there were no changes made when she complained about that situation, claimant felt that Dr. Hardinger would not make any changes due to her complaints about her Coronavirus concerns. Claimant tendered her written resignation to Dr. Hardinger on Thursday, March 19, 2020.

Claimant's administrative records establish that she has received unemployment insurance benefits of \$1,670.00 from March 22, 2020 through April 25, 2020. Claimant has also received Federal Pandemic Unemployment Compensation benefits from March 29, 2020 through April 25, 2020 in the amount of \$2,400.00.

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

For the reasons that follow, the administrative law judge concludes as follows:

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 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 had an intention to quit and carried out that intention by tendering her written resignation. As such, 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). Claimant contends that she voluntarily quit due to intolerable or detrimental working conditions.

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.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)(“[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith”); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer “free from fault”); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the alleged intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

Given the facts of this case, claimant's working conditions do not rise to the level where a reasonable person would feel compelled to quit. As such, she has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was dissatisfied with her work environment in general. This is not a good cause reason attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(21) 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 § 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 § 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:

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

As such, the claimant's voluntary quitting was not for a good-cause reason attributable to the employer. Benefits must be denied. Because benefits are denied, the issues of overpayment of benefits and overpaid of Federal Pandemic Unemployment Compensation benefits must be addressed.

Iowa Code § 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received benefits but has been subsequently determined to be ineligible for those benefits. As such, the claimant is overpaid unemployment insurance benefits of \$1,670.00 from March 22, 2020 through April 25, 2020 and must repay the agency those benefits.

The next issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation benefits. The administrative law judge finds that she is and that those must be repaid to the agency.

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 disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular benefits claimant received, the claimant also received

an additional \$2,400.00 in Federal Pandemic Unemployment Compensation benefits from March 29, 2020 through April 25, 2020. Claimant is overpaid and required to repay those benefits as well.

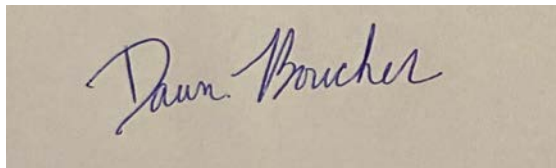
**While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, she may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.**

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and 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 currently 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>.

**DECISION:**

The April 30, 2020 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit her employment on March 19, 2020 without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

The claimant has been overpaid regular unemployment insurance benefits of \$1,670.00 for the weeks between March 22, 2020 and April 25, 2020 and is obligated to repay the agency those benefits. The claimant has also been overpaid Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits. Claimant is overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation benefits and is obligated to repay the agency those benefits as well.



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Dawn Boucher  
Administrative Law Judge

May 29, 2020  
Decision Dated and Mailed

db/scn