

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FADIEA HABHAB

Claimant

GEORGIA PACIFIC GYPSUM LLC

Employer

APPEAL 20A-UI-04186-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136 § 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant Fadia Habhab filed an appeal from the May 13, 2020 (reference 03) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer, Georgia Pacific Gypsum LLC (“Georgia Pacific”). The parties were properly notified of the hearing. A telephone hearing was held on June 3, 2020. Claimant Fadia Habhab appeared and testified. Tara Flowers, Jamaya Habhab, and Socolci Villeneuve testified on behalf of the claimant. Sean Stewart appeared and testified on behalf of Georgia Pacific. Exhibits 1 through 3 were admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

Was the claimant overpaid benefits?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

On February 10, 2020, Fadia Habhab commenced her employment with Gypsum Pacific as a production operator. Fadia Habhab worked a rotating schedule of two weeks on first shift, two weeks on third shift, two weeks on second shift, and then she would rotate back to first shift. Fadia Habhab’s sister, Jamaya Habhab, provided child care services to Fadia Habhab’s son, X.H., when Fadia Habhab was working and X.H. was not in school.

On Monday, March 16, 2020, X.H. became ill while Fadia Habhab was at work. Fadia Habhab worked four hours, left early, and took X.H. to the doctor. The doctor wrote Fadia Habhab a note excusing her from working for seven days because she and her son might have Covid-19. The doctor informed her she and her son should quarantine for seven days. Fadia Habhab contacted Stewart, the human resources manager for Georgia Pacific and reported she would need to be absent the rest of the week, March 17, 2020 through March 20, 2020. Stewart approved her

absence. While she was off work, Fadiea Habhab applied for unemployment insurance benefits. Fadiea Habhab did not look for work that week. That matter is the subject of a separate proceeding.

On Monday, March 23, 2020, Fadiea Habhab returned to work. She worked third shift Monday through Thursday that week. On Friday, March 27, 2020, Fadiea Habhab called into work reporting she would be absent. On Monday March 30, 2020, Fadiea Habhab was scheduled to work and she did not call in. Stewart was concerned and he attempted to call her on March 30, 2020 and March 31, 2020. Stewart was unable to reach Fadiea Habhab by telephone. On March 31, 2020, Stewart sent Fadiea Habhab a text message stating, "Fadiea, this is Sean at Georgia Pacific. I'm just concerned about you. Can you please give me a call when you are able. Use this number or the office number which is 515-955-0114." Fadiea Habhab responded "Good morning Sean, hey everything is fine but unfortunately I will not be returning to work. Thank you for the opportunities that was given to me out there and the time spent. Thanks." Stewart responded, asking her to give him a call so he could understand a little more context. Fadiea Habhab did not contact Stewart again.

Fadiea Habhab testified she quit her employment with Georgia Pacific because she did not have child care for her son, X.H. X.H. is nine years old and he has been diagnosed with disruptive mood dysregulation disorder, autism spectrum disorder, and attention deficit hyperactivity disorder. After the Covid-19 scare with X.H., Jamaya Habhab, told Fadiea Habhab she did not feel comfortable watching X.H. anymore and she needed to take care of her own children.

Villeneuve, the stepmother X.H., and Jamaya Habhab testified X.H. has angry outbursts and has special needs. Villeneuve reported child care for a child like X.H. costs \$41.00 per hour.

Flowers is X.H.'s special education teacher through the Cares Program in Fort Dodge. The Cares Program is a specialized program for students with behavioral challenges. X.H. attends class with Flowers with three other children. Flowers testified her nephew also has behavioral problems similar to X.H. and the daycare he attended asked for his removal. Flowers reported when her class joins another class for a total of eight students X.H. often becomes agitated and will display behaviors including swearing, hitting the walls, and knocking chairs over. X.H. has an imaginary friend in his head, Adam, who tells him to hurt his mom and other people. On one occasion X.H. was using vulgar words at school and he told Flowers Adam told him to hurt another student and that "I try to tell no, F-U, I will not do it". Flowers is not aware of any daycare in Fort Dodge that would provide daycare for X.H. Flowers reported none of her students attend daycare.

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: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

Fadia Habhab testified she quit her employment with Georgia Pacific because she cannot find child care for X.H. Iowa Admin. Code r. 871-24.25(17) 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. 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:

(17) The claimant left because of lack of child care.

The rule presumes quitting due to a lack of child care is presumed to be without good cause attributable to the employer and does not provide for an exception in this case. While Fadia Habhab quit for good personal reasons, they are not attributable to Georgia Pacific, the employer.

I determined Fadia Habhab was disqualified from receiving regular compensation under Iowa law. According to agency's records, Fadia Habhab did not receive any weekly unemployment benefits under Iowa law, but she received \$3,600.0 in Federal Pandemic Unemployment Compensation for the weeks between March 29, 2020 and May 3, 2020. Because benefits have been denied, the issue of overpayment of benefits must be addressed.

Iowa Code section 96.3(7) governs the recovery of overpaid unemployment insurance benefits under Iowa law. A separate provision governs the recovery of overpaid Federal Pandemic Unemployment Compensation. 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...

Fadia Habhab is disqualified from receiving regular unemployment insurance benefits under Iowa law. This also disqualifies her from receiving Federal Pandemic Unemployment Compensation. Fadia Habhab was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation and is required to repay those benefits.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, the claimant 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 May 13, 2020 (reference 03) unemployment insurance decision denying unemployment insurance benefits affirmed. The claimant voluntarily quit her employment without good cause attributable to the employer. Unemployment insurance benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation benefits for the weeks between March 29, 2020 and May 3, 2020. The claimant is obligated to repay the agency for these benefits.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 22, 2020
Decision Dated and Mailed

hlp/scn