

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE L KAMINSKI
Claimant

APPEAL 20A-UI-05926-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC L
Employer

OC: 04/26/20
Claimant: Respondent (2)

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
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On June 11, 2020, Packers Sanitation Services Inc (employer/appellant) filed an appeal from the June 2, 2020 (reference 01) unemployment insurance decision that allowed benefits.

A telephone hearing was held on July 14, 2020. The parties were properly notified of the hearing. Employer participated by Site Manager Dante Guzman. Jacqueline Kaminski (claimant/respondent) did not register a number for the hearing and did not participate.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. 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:

Claimant's first day of employment was January 15, 2020. The last day claimant worked on the job was January 24, 2020. Claimant was on a leave of absence beginning January 24, 2020. Claimant was initially in contact with employer about her leave. Employer waited for some time to receive paperwork from claimant regarding this leave, but employer did not receive it. Employer then attempted to contact claimant about her leave and expected return date but was unable to reach her for some time.

Claimant was scheduled to work March 11, 12, and 13, 2020. Claimant did not call or report to work those days. Under employer's policies, three consecutive no-call, no-show absences is considered a voluntary quit. Employer waited to terminate claimant's employment for approximately a month after these absences, to see if claimant would reach out. Claimant had no further communication with employer since that time and has not attempted to return to work. Employer finally processed claimant's termination on April 15, 2020. Exhibit 1.

Claimant has received benefits in the amount of \$110.00 for a period of eleven weeks. The total amount of benefits paid to date is \$1,210.00. Claimant has received FPUC in the amount of \$600.00 for ten weeks. The total amount of FPUC \$6,000.00.

It is unclear whether a representative for employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the June 2, 2020 (reference 01) unemployment insurance decision that allowed benefits is REVERSED.

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

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

- (4)** The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge finds claimant voluntarily quit by being absent for three consecutive days without notice in violation of company rule. Claimant was scheduled to work March 11, 12, and 13, 2020. Claimant did not call or report to work those days. Under employer's policies, three consecutive no-call, no-show absences is considered a voluntary quit. Employer waited to terminate claimant's employment for approximately a month after these absences, to see if claimant would reach out. Claimant had no further communication with employer since that time and has not attempted to return to work. Employer finally processed claimant's termination on April 15, 2020. Exhibit 1.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 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.

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.

(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.

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.

Because the administrative law judge now finds claimant ineligible for benefits, she has been overpaid benefits in the amount of \$1,210.00. Because it has not been established that employer did not participate in the fact-finding interview, the benefits shall be recovered. 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.

III. Is the claimant eligible for 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...

Claimant has received FPUC in the amount of \$600.00 for ten weeks. The total amount of FPUC is \$6,000.00. Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$6,000.00. Claimant is required to repay those benefits.

DECISION:

The June 2, 2020 (reference 01) unemployment insurance decision that allowed benefits is REVERSED. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied. Claimant is disqualified from receiving benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$1,210.00. Benefits shall be recovered. 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.

Claimant has been overpaid FPUC benefits in the amount of \$6,000.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 22, 2020
Decision Dated and Mailed

abd/sam

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.