

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSEMARIE STOTTS
Claimant

CARROLL COUNTY
Employer

APPEAL 20A-UI-05668-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Administrative Code Rule 871-24.26(21) – Quit in Lieu of Discharge
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Carroll County, filed an appeal from the June 5, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on July 2, 2020. The hearing was postponed due to technical difficulties. After proper notice, a telephone hearing was conducted on July 22, 2020. The claimant, Rosemarie Stotts, participated personally. The employer, Carroll County, participated through John C. Werden, county attorney. Kourtney Irlbeck, Richard Ruggles and Sandy Sweeney testified for employer.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. 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:

Was the claimant given the option of resigning in lieu of discharge for work connected misconduct sufficient to warrant the denial of unemployment insurance benefits?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?
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 splitting time as the General Assistance Director and regional social worker, and was separated from employment on May 13, when she quit in lieu of discharge (Claimant Exhibit A). Continuing work was not available.

The claimant was employed for approximately thirteen and a half years. She last performed work on April 10, 2020 until she was placed on an administrative leave pending investigation. The claimant's conduct was investigated based upon two incidents with the same client, when acting in both of her roles as Social Worker and General Assistance Director. The incidents spanned several months. The employer learned of the incidents, based upon an anonymous tip.

The claimant knew the client based upon her role as a social worker. She stated there was no outside relationship with this client, but that the client had before invited the claimant to spend the night and watch movies, which the claimant declined.

The client in question had medical issues, including mental health impairments, and had a payee to assist based upon her receipt of Social Security/disability benefits. The client did not like her payee. The client was also living in a volatile home situation. The client approached the claimant and asked her to hold on to approximately \$6,000 in cash that she had received through an inheritance. The client did not tell her payee, and did not want to keep the money at home for access purposes. She did not want to put the money in a bank for safekeeping. Rather, she asked the claimant to essentially be her personal bank, keeping the money in the claimant's office, in a lock box. For a period of time, the claimant administered funds at the client's request, while keeping the cash in her office.

Then, the claimant, in her capacity as General Assistance Director, approved \$348.00 in monies to the client on March 14, 2020, to help pay for new furniture and items for a home, as she was moving out of her volatile home situation. As of April 10, 2020, (when the employer initiated the investigation and had access to the cash on hand) the claimant had \$1,422.00 in cash of the client's in her office, so it is likely she had at least that much at the time the request for assistance was made.

The purpose of the general assistance fund is for "emergency assistance for needy persons, assistance for poor persons and assistance while awaiting approval and receipt for federal/state public assistance" (Claimant Exhibit A). The relevant ordinance further identifies "assistance" meaning food, rent, shelter, transportation, emergency telephone service, fuel, electric and medical attention" (Claimant exhibit A). The claimant in her position, had discretion to approve or deny applications, and a report of approved monies was shared later with the Carroll County Board of Supervisors on a routine basis.

Upon learning of the incidents, the employer investigated, along with local law enforcement, regarding the claimant's handling of monies before determining the claimant would not be criminally charged, but had mishandled monies in connection with her job duties. The claimant denied that she was out of line holding on to \$6,000 cash or that she was improper in dispersing general assistance funds to the client, in light of the client having at least \$1,422.00 in cash available.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,760.00, since filing a claim with an effective date of May 17, 2020. The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$4,200.00 in federal benefits for the seven-week period ending July 18, 2020.

The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Kourtney Irlbeck attended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit in lieu of being discharged. Had the claimant not tendered her resignation, she would have been discharged for disqualifying, job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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). In this case, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

Iowa Administrative Code rule 871-24.32(1)a provides:

"Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was suspended and given the choice to resign or be discharged, based upon her handling of a client's personal money and her disbursement of general assistance funds to the same client. As a social worker, the claimant's job duties were not to serve as a personal bank for a client. The client in question had a payee who could have been notified about monies, the claimant could have reasonably directed the client to a bank or financial institution, or alternately declined to hold on to the money for her. It cannot be ignored that this was not a temporary, short-term request of the client, due to an emergency or immediate situation, but rather an ongoing arrangement for months. It also cannot be ignored that the amount of cash given to the claimant for safekeeping was \$6,000.

The claimant's conduct overstepped reasonable boundaries between a client and their social worker. She also placed the employer in harm, had the money been stolen, or the client challenged the claimant's accounting for the funds. While a social worker's job duties reasonably involve providing practical support for clients, the administrative law judge is not persuaded that the claimant reasonably believed holding onto \$6,000 cash was within the scope of her job duties.

Further, because the claimant had personal knowledge of this money, the administrative law judge does not find her decision to give the client \$348.00 from the Carroll County General Assistance fund to be appropriate or in accordance with the ordinance. If the client had over \$1,400 in cash available, (and stored in the claimant's desk) she would not need "emergency assistance." Further, the local ordinance outlines the monies from the general assistance fund are to be used for immediate needs like food, utilities, and rent; not for personal furnishings. In light of the claimant's experience, knowledge of the client's cash on hand, and the purpose of the funds for home furnishings, she knew or should have known that approving general assistance funds to this client was not appropriate.

The administrative law judge has carefully considered all of the evidence in this case and concludes that the claimant's actions show more than simple negligence or an error in judgment or discretion. Rather, the serious nature of her handling both county funds and choosing to withhold \$6,000 cash in her office for a client, reflect deliberate, intentional choices. The claimant purposefully chose to withhold \$6,000 of cash in her office and purposefully chose to allocate funds to this client, knowing she was not in a true emergency, as the fund was intended.

In light of the claimant's denial at hearing, the administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

The next issue to address is the overpayment of regular unemployment insurance benefits and employer's relief of charges.

Iowa Code § 96.3(7)a-b 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 § 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 § 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.

(1) 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 § 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The claimant has been overpaid benefits in the amount of \$3,760.00. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be

recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that it did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. The employer satisfactorily participated in the scheduled fact-finding interview by way of Kourtney Irlbeck. Since the employer did participate in the fact-finding interview, the claimant is obligated to repay the benefits she received and the employer's account shall not be charged.

The final issue to address is whether the claimant is 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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, she also received an additional \$4,200.00 in FPUC benefits for the seven-week period ending July 18, 2020.

DECISION:

The June 5, 2020 (reference 01) initial decision is reversed. The claimant quit in lieu of discharge. The claimant was discharged for disqualifying job related misconduct. Benefits are

withheld until such time as she 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 regular unemployment insurance benefits in the amount of \$3,760.00. She is required to repay the benefits because the employer participated in the fact-finding interview. The employer's account is relieved of charges based upon its participation.

The claimant has also been overpaid \$4,200.00 in Federal Pandemic Unemployment Compensation. The claimant may have to repay the benefits received thus far, unless the claimant applies and is approved for PUA, as directed below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits. If 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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.



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July 31, 2020
Decision Dated and Mailed

jlb/sam