

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER A LAMB
Claimant

SALON ARIA LLC
Employer

APPEAL 21A-UI-22653-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (2R)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
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 October 12, 2021, the employer/appellant filed an appeal from the October 4, 2021, (reference 02) unemployment insurance decision that allowed benefits based on claimant being discharged by the employer but there was no evidence of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 2, 2021. The hearing was held together with appeals 21A-UI-21778-CS-T; 21A-UI-21780-CS-T; and 21A-UI-21781-CS-T, and combined into one record. Claimant participated at the hearing. Claimant's husband, Michael Lamb, was present at the hearing and was the claimant's hearing representative. Employer participated through Christine McClimon. Exhibit A was admitted into evidence. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

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

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 3, 2012. Claimant last worked as a part-time hair stylist.

On March 17, 2020, the employer was mandatorily closed due to the COVID-19 pandemic. The claimant was not able to work for the employer during this time. The employer reopened the salon

on May 16, 2020. Prior to the re-opening of the salon the employer contacted claimant about returning on May 16, 2020. The claimant decided not to return to work when the employer re-opened because of her husband's health conditions. The claimant had continuing work available to her if she had returned to work. The claimant has not returned to offer her services to the employer and the claimant would go back to the employer if she decided to return. The employer would allow the claimant to return to work for the employer.

The claimant filed a claim for benefits on March 15, 2020. Claimant's weekly benefit amount was \$528.00. Claimant received \$7,447.44 for weeks beginning July 7, 2020 through October 17, 2020. An overpayment decision dated September 17, 2021 (ref. 02) for the amount of \$4,752.00 was issued for the state benefits claimant received for the weeks between June 28, 2020 and August 29, 2020.

A decision dated September 16, 2021 (ref. 03) has been made that determined claimant was overpaid FPUC benefits for the weeks between June 28, 2020, and July 25, 2020.

A decision dated September 16, 2021 (ref. 04) has been made that determined claimant was overpaid LWAP benefits for the weeks between August 1, 2020, and August 29, 2020.

The claimant filed for a subsequent benefit year on March 14, 2021. Claimant's weekly benefit amount is \$510.00. Claimant has not received any benefits for the subsequent benefit year.

The employer participated in a fact-finding phone call. The employer did not submit documents during the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 96.5(1)f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal

reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; ***except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.***

In this case the claimant was not discharged. The employer contacted claimant to return to work on May 16, 2020. The claimant informed the employer that she would not be returning due to her concern about her husband's health conditions and COVID-19. The employer agreed that claimant could return to work when she felt more comfortable. The claimant has been absent from work for more than ten days for compelling personal reasons. Since May 16, 2020, the claimant has not returned to her employer to offer her services. The claimant is not eligible for benefits under Iowa law. Benefits are denied as of May 16, 2020.

The next issue that must be determined is whether the claimant has been overpaid state unemployment insurance benefits and whether claimant is required to repay them.

Iowa Code section 96.3(7)a-b, as amended in 2008, 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. 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 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.

(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 claimant's separation was disqualifying, benefits were paid to her which she was not entitled. An overpayment decision was previously issued on September 17, 2021 (ref. 02) that found claimant was overpaid \$4,752.00. Since these weeks have previously been determined to

be overpaid the administrative law judge is not including them in her calculation of overpayment of state benefits. As a result, the administrative law judge finds claimant has been overpaid regular state unemployment benefits in the amount of \$2,695.44 for the weeks between September 4, 2020, and October 17, 2020. Claimant is required to repay the regular state unemployment benefits because the employer did participate in the fact-finding interview. The charges shall be removed from the employer's account.

DECISION:

The October 4, 2021, reference 02, decision is REVERSED. The claimant voluntarily left employment without good cause attributable to the employer. 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.

Claimant has been overpaid unemployed insurance benefits in the amount of \$2,695.44, which she is required to repay. The employer's account shall not be charged.

REMAND:

The issue of claimant's overpayment of FPUC, LWAP, and PEUC benefits received after May 16, 2020, is remanded to the benefits bureau for an initial investigation and determination. The benefits bureau should take into consideration during their calculations that previous overpayment decisions have been issued in decisions dated September 16, ref. 03 and 04.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 5, 2022

Decision Dated and Mailed

cs/abd

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.