

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE W WILSEY
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

**APPEAL 20A-UI-12696-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/12/20
Claimant: Respondent (2R)**

Iowa Code § 96.5(1)J – VQ – Temporary employment firm
Iowa Code § 96.3(7) – Payment – Overpayment
Iowa Admin. Code r. 871-24.26(15) – VQ – Employee of Temporary Employment Firm
Iowa Admin. Code r. 871-24.10 – Payment – Employer participation in fact-finding interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the October 7, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 11, 2020, at 8:00 a.m. Claimant participated. Employer participated through Sarah Fiedler, Risk Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant made a timely request for another job assignment.
Whether claimant has been overpaid unemployment insurance benefits.
Whether claimant should repay those benefits and/or whether employer should be charged due to its participation in the fact-finding interview.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed by Team Staffing Solutions, a temporary employment firm, from July 31, 2019 until his employment ended on July 11, 2020. Claimant's sole assignment during his employment was as a full-time General Laborer at Siemens. Claimant's assignment was scheduled to end July 13, 2020. On July 1, 2020, claimant was offered a 12-week extension of his assignment; claimant declined. Claimant spoke with employer prior to his last day working at Siemens. Claimant did not request a new assignment during that conversation. Claimant did not contact employer after his assignment ended. Claimant did not request a new assignment through employer because he was pursuing other employment options at the time.

Employer has a policy that requires employees to request a new assignment within three working days of completing an assignment. (Exhibit 1) The policy is in writing and separate

from the employee handbook. Claimant signed the policy. (Exhibit 1) Claimant received a copy of the policy.

The administrative record reflects that claimant filed for and has received regular unemployment insurance (UI) benefits in the gross amount of \$4,185.00 for the nine-week period between July 12, 2020 and September 12, 2020. In addition to regular unemployment insurance benefits, claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$1,200.00 for the two-week period between July 12, 2020 and July 25, 2020. Claimant also received Lost Wages Assistance (LWA).

Employer was prepared to participate in the fact-finding interview in this case but did not receive a telephone call from the fact-finder at the scheduled time for the interview. The fact-finder called late and left a voicemail for employer's representative. Employer was unavailable at the time of the fact-finder's call because she was in a different unemployment appeal hearing. Employer returned the fact-finder's call and left a message but received no response.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit his employment without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

Claimant's assignment at Siemens ended on July 11, 2020. Claimant did not request a new assignment from employer within three working days. Claimant was advised of the requirement to request a new assignment. Claimant signed and received a copy of the policy. Claimant is considered to have voluntarily quit his employment with Team Staffing Solutions. The reason claimant did not request another assignment was because he was pursuing other employment. This reason does not constitute good cause attributable to employer. Claimant has not met his burden of proving that he voluntarily quit with good cause attributable to employer. Accordingly, claimant voluntarily quit without good cause attributable to employer and, thus, is not eligible for benefits.

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. For the reasons that follow, the administrative law judge concludes claimant has been overpaid benefits, but is not required to repay those benefits. Employer did not participate in the fact-finding interview through no fault of its own; therefore, employer's account shall not be charged. The regular unemployment insurance benefit overpayment is charged to the fund.

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 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.

(2) 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 section 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.

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 they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$4,185.00 for the nine-week period between July 12, 2020 and September 12, 2020. There is no evidence that claimant received these benefits due to fraud or willful misrepresentation. Furthermore, employer did not participate in the fact-finding interview. Therefore, claimant is not obligated to repay the UI benefits that claimant received. While employer did not participate in the fact-finding interview, it was not because employer failed to timely or adequately respond to IWD's request for information relating to the payment of benefits; employer never received the request. Accordingly employer's account cannot be charged. Because neither party is to be charged, the UI overpayment is absorbed by the fund.

The next issues to be determined are whether claimant was eligible for FPUC and whether claimant has been overpaid FPUC. For the reasons that follow, the administrative law judge concludes claimant was not eligible for FPUC and was overpaid FPUC, which must be repaid.

PL 116-136, 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...

Because claimant is disqualified from receiving UI, claimant is also disqualified from receiving FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$1,200.00 for the two-week period between July 12, 2020 and July 25, 2020. Claimant must repay these benefits.

The issue of whether claimant has been overpaid LWA should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The October 7, 2020 (reference 01) unemployment insurance decision is reversed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$4,185.00 for the nine-week period between July 12, 2020 and September 12, 2020 and is not obligated to repay those benefits to the agency. Employer did not participate in the fact-finding interview through no fault of its own; employer's account shall not be charged. The regular unemployment insurance benefit overpayment must be charged to the fund.

Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$1,200.00 for the two-week period between July 12, 2020 and July 25, 2020, which must be repaid.

REMAND:

The issue of whether claimant has been overpaid Lost Wages Assistance is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



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

December 18, 2020
Decision Dated and Mailed

acw/scn