

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSS M TROWBRIDGE
Claimant

**IA DEPT OF EDUCATION VOCATIONAL
REHAB**
Employer

APPEAL NO. 21R-UI-18329-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Respondent (2)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation or Lost Wages Assistance Program
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 16, 2021, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 12, 2021. Claimant participated personally. Employer participated by attorney Kelley Rice and witnesses Leslie McCarthy and Richard Clark. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Whether claimant voluntarily quit with good cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

Is the claimant eligible for FPUC or LWAP benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 30, 2020. Claimant voluntarily quit on that date as he was distraught and emotionally scarred over incidents that occurred when claimant worked for employer at a different office at a different city.

Claimant worked as a rehabilitation assistant for employer out of the Waterloo office from November of 2018 through September of 2020. In September of 2020 claimant transferred to the Des Moines office. Claimant worked at the Des Moines office until November 30, 2020. At

that time claimant voluntarily quit his job stating that the emotional and mental anguish he suffered while working for his Waterloo supervisor was such that he could not continue to work for Vocational Rehabilitation – even if it was in an office in a different part of the state with a different manager.

Claimant stated that in early April of 2020 he asked a coworker to write out a statement for him detailing how she was allowed to listen to voicemail left for the area supervisor. Included within a voicemail was a reference to claimant being granted FMLA time off from work. The coworker asked claimant about being granted leave. This greatly upset claimant and he wanted to have a statement as to how the coworker could know private information about him. When the coworker did not write a statement that was satisfactory to claimant, he threw it down. Claimant was accused of threatening a coworker.

That same day, claimant was sharing information through the office email of his intent to work from home. He included that he had a possible Covid exposure two weeks prior. His supervisor saw this and became very upset, telling claimant to leave immediately. Claimant refused to leave and employer called the police. No charges were filed against claimant, but he was placed on administrative leave. When claimant came back from leave approximately a month later, the office he'd been granted was being used by another employee.

Over the next couple of months, claimant was very distraught about the new rules the area supervisor implemented against him. He was not to email coworkers, or anyone working for the state without permission. His duties were restricted. Claimant believed the great majority of emails he received from the supervisor were bullying him.

Claimant complained repeatedly to management at Vocational Rehabilitation. The state offered claimant a rehabilitation assistant job in Des Moines. Claimant accepted the offer and started working in Des Moines in September 2020. Claimant stated that the complaints he had from the Des Moines job was that he did more clerical work than he had in Waterloo and that his new boss was more hands on than his previous Waterloo supervisor. Claimant quit his job on November 30, 2020 citing the emotional and mental anguish endured while working in the Waterloo office.

Claimant has received state unemployment benefits in the amount of \$3,151.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in the amount of \$900.00.

Employer did substantially participate in fact finding in this matter by presenting info through SIDES telling of his quit and providing the resignation letter to the fact finder.

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:

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.

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, except that the State agency may waive repayment if it determines that –

- (A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and
- (B) such repayment would be contrary to equity and good conscience.

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

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because claimant felt he'd been emotionally traumatized through the occurrences he'd endured at the Waterloo office.

Employer in this matter realized that claimant and his supervisor had a personality conflict that was not improving over time. Employer addressed this situation and offered claimant a lateral move to a different office. Claimant accepted this offer, and had a successful transition to the Des Moines office. Even though claimant had no contact with the Waterloo supervisor after accepting the transfer, and even though claimant did not have substantial reasons for quitting the job in Des Moines, claimant decided his former trauma was too great to stay working for employer. Claimant provided none of the alleged emails that were, in his words, bullying 70 percent of the time, nor did he offer any medical proof substantiating his claim that it was the occurrences in Waterloo and not prior to then that caused him the trauma.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* In this matter, employer sought to alleviate claimant's concerns through a job in a different locale. Claimant did not indicate he was pressured to take this job. The job in Des Moines seems to have gone well. Yet, claimant quit as a result of occurrence from a place he hadn't been to in months from a man he hadn't heard from in months. Here, common sense indicates that claimant's quit was brought about by a large variety of reasons, few of which are attributable to employer. Benefits are denied.

The overpayment issue was addressed. Claimant has received state benefits in the amount of \$3,151.00, and FPUC benefits in the amount of \$900.00. These amounts are overpayments.

The issue of employer participation was addressed. Employer did substantially participate in fact finding such that employer's account will not be charged for overpayments received by claimant.

DECISION:

The decision of the representative dated March 16, 2021, reference 01, is reversed. Unemployment insurance benefits shall be withheld 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.



Blair A. Bennett
Administrative Law Judge

October 15, 2021
Decision Dated and Mailed

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NOTE TO CLAIMANT:

- This decision determines you have been overpaid FPUC 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.
- You may also request a waiver of this overpayment. The written request must include the following information:
 1. Claimant name & address.
 2. Decision number/date of decision.
 3. Dollar amount of overpayment requested for waiver.
 4. Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319

- This Information can also be found on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.