

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSH J BRENNAN
Claimant

NEW CHOICES INCORPORATED
Employer

APPEAL 21A-UI-11284-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(1) – Voluntary Quitting
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, New Choices Incorporated, filed an appeal from the April 19, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 9, 2021. The claimant, Josh J. Brennan, participated. The employer participated through Brad Lemen.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1 and Claimant Exhibits A-M were 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:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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 as a direct support professional beginning in 2001 and was separated from employment on September 1, 2020. Claimant last performed work on March 15, 2020.

Claimant requested and was granted a leave of absence effective March 15, 2020. Claimant’s small child has chronic health issues, which make him high risk if exposed to COVID-19. Due to claimant’s job duties, his son’s doctors’ advised claimant self-quarantine, rather than work, to

avoid COVID-19 exposure. Claimant remained in contact with employer during his leave of absence. Claimant was aware that his leave of absence would expire on September 1, 2020.

Claimant notified employer on August 24, 2020 that he would be unable to return to work. (Claimant Exhibit H). When claimant did not return on September 1, 2020, separation ensued pursuant to employer's leave of absence policy. (Employer Exhibit 1).

The administrative record reflects that claimant has received unemployment benefits, Pandemic Unemployment Emergency Compensation (PEUC) benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits since this separation from employment. Employer did not participate in the fact finding interview because it did not receive a notice of the fact finding interview or a telephone call.

REASONING AND CONCLUSIONS OF LAW:

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

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. 871-24.1 provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

In this case, claimant began a leave of absence on March 15, 2020 with an understanding that the leave of absence would end September 1, 2020. Claimant failed to return upon the leave of absence ending. The administrative law judge is sympathetic to claimant's situation, but the credible evidence presented does not support claimant being allowed regular state benefits according to Iowa law. Accordingly, regular state benefits are denied.

*Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.*

The next issue is whether claimant was overpaid benefits and should have to repay those benefits.

In this case, claimant received regular unemployment insurance benefits, PEUC benefits, and FPUC benefits after his separation from employment. While the issues regarding overpayment of regular and FPUC benefits were on the hearing notice, the issue regarding entitlement to and overpayment of PEUC benefits was not. Therefore, the issue regarding overpayment of benefits will be remanded to the Benefits Bureau of Iowa Workforce Development for a calculation.

Claimant should not be required to repay regular unemployment insurance benefits and employer should be charged for unemployment insurance benefits, as employer did not participate in the fact finding interview through no fault of its own. See Iowa Code § 96.3(7)a-b; Iowa Admin. Code r. 871- 24.10.

DECISION:

The April 19, 2021, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit without good cause attributable to the employer. Regular unemployment insurance benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits and the issue of the amount of the overpayment will be remanded to the Benefits Bureau of Iowa Workforce Development for calculation. The claimant will not be required to repay regular unemployment insurance benefits and employer will not be charged for any benefits because employer did not participate in the fact finding interview through no fault of its own.

REMAND: The issue of claimant's overpayment of regular unemployment insurance benefits, PEUC benefits, and FPUC benefits is remanded to the Benefits Bureau of Iowa Workforce Development for a calculation and decision. Claimant will not be required to repay the overpayment of regular unemployment insurance benefits and employer will not be charged.

Jennifer L. Beckman

Jennifer L. Beckman
Administrative Law Judge
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July 20, 2021
Decision Dated and Mailed

jlb/scn

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. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>