

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNA M TERRELL
Claimant

CEDAR RAPIDS COMM SCHOOL DIST
Employer

APPEAL NO. 21A-UI-01733-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Respondent (2)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
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 December 14, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 23, 2021. Claimant participated personally. Employer participated by Benjamin Happel. Claimant's exhibits 1-72 and employer's exhibit A were admitted into evidence.

ISSUES:

Whether claimant quit for 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?

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 October 8, 2020. Claimant voluntarily quit on October 9, 2020 as claimant did not believe she had the support necessary from her school or district to properly conduct online classes for her 45 online 3rd grade students.

Claimant worked as a school teacher for 5 years. This year classes were divided between in school and remote classes. As claimant is immunocompromised and has an immunocompromised child at home, she chose to be an online teacher for students who chose to learn remotely. Claimant believed she was not given an adequate curriculum from which to create her online classes. She repeatedly asked for assistance in this matter, but her principal was not responsive to her inquiries by providing a complete curriculum, although he consistently was friendly and quickly answered emails.

Claimant's class was a mixture of students from different socioeconomic backgrounds with different levels of knowledge and differing levels of parental interest. This led to connectivity issues for some families with the internet connections. Of added difficulty was the fact that Cedar Rapids had recently experienced a derecho with highlighted already different learning environments.

Claimant was frustrated with the hours she would have to spend preparing for classes as the framework had not been adequately created from which she could comfortably remotely teach. Although she'd worked harder than she had in her previous nineteen years of teaching, she was not comfortable with the position she was in.

Claimant met with her principal to discuss her frustrations on October 7. At the meeting, she asked to be represented by a union member or have the meeting recorded as she felt that her job was at risk. Employer stated that in no way was claimant's job at risk. Claimant had not been given any warnings for any inappropriate actions and there were no documented complaints against the claimant. Procedurally, in order for a job to be at risk, a many step process must be followed before any teacher can be terminated. Claimant did not have the first step of the process even considered at the time of her quit.

Claimant has received unemployment benefits in this matter of \$10,890.00.

Employer did not substantially participate in fact finding in this matter as employer gave an incorrect address to be reached for the hearing.

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.

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 she felt a lack of guidance and curriculum necessary to conduct her online classes with a large number of students. Claimant did not express how her situation was different from other online teachers who also were asked to navigate heretofore unseen territory in teaching classes to students with difficulties involving everything from connectivity issues, to a different melding of students to attendance concerns. All online teachers had to learn on the fly in a remarkably difficult learning environment, not simply claimant. Through the documents received, it appears that employer's representatives are consistently attempting to work with claimant through the myriad difficulties in starting up a new way of teaching to young students.

Absent more particularized reasons for quitting, if the administrative law judge were to find claimant's quit to be for good cause attributable to employer, it would have to hold the same for all Cedar Rapids online teachers who chose to quit. This is not a step that has been shown to be a reasonable result given the special circumstances we are all living under.

The overpayment issue was addressed. Claimant has received \$10,890.00 in state unemployment benefits. This amount is an overpayment.

The issue of employer participation was addressed. Employer did not substantially participate in fact finding as no representative was made available at a number that could be reached for a rebuttal statement.

DECISION:

The decision of the representative dated December 14, 2020, 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.

Claimant has received unemployment benefits in this matter in the amount of \$10,890.00. Said amount is an overpayment.

Employer did not substantially participate in fact finding in this matter. As this is the case, employer's account will be charged for overpayments received by claimant.



Blair A. Bennett
Administrative Law Judge

March 04, 2021
Decision Dated and Mailed

bab/ol

Note to Claimant:

Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. **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>.