

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONIECE MASON**  
Claimant

**APPEAL 21A-UI-07737-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 03/15/20**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment  
PL 116 – 136 Section 2104 – Federal Pandemic Underemployment Compensation eligibility  
PL 116 – 136 Section 2107 – Pandemic Emergency Unemployment Compensation eligibility<sup>1</sup>

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 4, 2021, (reference 03) unemployment insurance decision that granted benefits based upon the conclusion the claimant was discharged by the employer and it did not provide evidence of willful work-related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2021. The claimant did not participate. Employer participated through General Manager Dave Davies and Equifax Representative Connie Hickerson. Exhibits 1, 2, and 3 were received into the record.

**ISSUE:**

1. Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
2. Whether the claimant is overpaid benefits? Whether the claimant is excused from repaying these benefits due to the employer's non-participation at fact finding?

**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 guest service representative from May 19, 2019, until she was separated from employment on May 17, 2020, when she quit. The claimant's immediate supervisor was Assistant General Manager Ericka Pohlman. The claimant worked a variable schedule from 32 hours per week to 40 hours per week.

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<sup>1</sup> Overpayment of Lost Wages Assistance was listed as an issue at the bottom of the hearing notice. The corresponding law was not listed on the hearing notice, 42 U.S.C. 5174 Section 408(e)(2) and (f). Since the claimant did not participate, this issue could not be waived and was not evaluated.

On May 16, 2020, Ms. Pohlman told the claimant that they would have to discuss disparaging remarks the claimant made of coworkers and the employer on social media at her next scheduled shift. The level of discipline the claimant would have received for this behavior would have depended on her remorse for posting the disparaging remarks.

The claimant sent a Facebook messenger message to Ms. Pohlman on May 17, 2020, stating she was quitting effective immediately. The claimant stated the hours she was receiving from her employer were no longer conducive to her schedule. The claimant's hours had not changed from the ones she had been receiving. The employer provided a separation notice completed by Ms. Pohlman that corroborates its allegations. (Exhibit 1) Ms. Pohlman did not testify on behalf of the employer because she is no longer employed by the employer. The employer provided a copy of the claimant's time card from that pay period to show she was receiving the same number of hours. (Exhibit 2)

The employer provided a copy of its communication policy. The policy states that complicated conversations should be addressed in person, rather than through the use of text messaging or social media. The policy forbids employees from sharing work-related concerns publicly on social media platforms. (Exhibit 3) General Manager Dave Davies explained that the policy was also provided to show it would not have terminated the claimant's employment over the phone.

The following section describes the findings of fact needed for the overpayment issue:

The claimant filed a claim for benefits effective March 15, 2020. Her weekly benefit amount is \$309.00. The claimant received \$4,079.00 in regular unemployment insurance benefits for 17 weeks from the week ending May 23, 2020 to the week ending September 12, 2020. The claimant received \$7,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits over the 11 week period from the week ending May 30, 2020 to the week ending September 5, 2020. The claimant received \$4,017.00 in Pandemic Emergency Unemployment Compensation from the week ending September 19, 2020 to the week ending December 19, 2020.

The employer did not participate at fact finding because it did not receive a notice of fact finding. The administrative records KFFV and KFFD do not reflect that a fact finding interview was conducted regarding this claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. The resulting overpayment will be covered by the fund because the employer's non-participation was due to not receiving a notice of fact finding.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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 Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, the claimant stated she was resigning because she was no longer satisfied with the hours she had been receiving. These hours did not change from the time of her hire. She also resigned after being notified she would be reprimanded for discussing work-related concerns on social media. These are all generally reasons not attributable to the employer. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

The next issue is whether claimant has been overpaid benefits. Iowa Code § 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 claimant received \$4079 in regular unemployment insurance benefits for 17 weeks from the week ending May 23, 2020 to the week ending September 12, 2020.

Because the claimant’s separation was disqualifying, benefits were paid to which she was not entitled. 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 benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, the employer did not participate in the fact-finding interview. Thus, claimant is not obligated to repay to the agency the benefits she received.

The law also states that an employer is to be charged if “the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits. . .” Iowa Code § 96.3(7)(b)(1)(a). Here, the employer had no notice of a fact-finding interview. By not giving notice to the employer, the employer did not have an opportunity to provide a valid telephone number to the fact-finder. Benefits were paid, but not because the employer failed to respond timely or adequately to the agency’s request for information relating to the payment of benefits. Instead, benefits were paid because employer did not receive a call at a correct number from the agency. Employer thus cannot be charged. Since neither party is to be charged then the overpayment is absorbed by the fund.

The next issue to determine is whether the claimant was overpaid FPUC benefits:

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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). The claimant was overpaid \$7,800.00 in Federal Pandemic Unemployment Compensation (FPUC).

The next issue to determine is whether the claimant was overpaid PEUC benefits:

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

...

(e) 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...

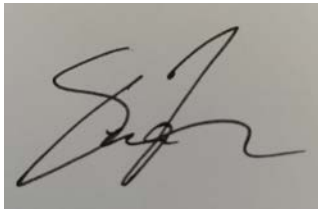
The terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for pandemic emergency unemployment compensation and the payment thereof, except where otherwise inconsistent with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section... See PL 116-136 Sec 2107 (4)(B).

Since the decision disqualifying the claimant has been affirmed, this also disqualifies claimant from receiving Federal Pandemic Emergency Unemployment Compensation (PEUC). The claimant was overpaid \$4,017.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC).

**DECISION:**

The March 4, 2021, (reference 03) unemployment insurance decision is reversed. The claimant voluntarily left her 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.

The claimant has been overpaid unemployment insurance benefits in the amount of \$4,079.00 but is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview due to no fault of its own and its account shall not be charged. Rather, the overpayment should be charged to the fund. The claimant was overpaid \$4,017.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC). The claimant was overpaid \$7,800.00 in Federal Pandemic Unemployment Compensation (FPUC). Unless the claimant obtains a waiver, these federal benefits must be repaid.



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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

June 21, 2021  
Decision Dated and Mailed

smn/scn



**NOTE TO CLAIMANT:**

- This decision determines you have been overpaid FPUC and PEUC 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.