

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J MCLACHLAN
Claimant

APPEAL 200-UI-07684-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP, INC.
Employer

OC: 03/08/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code section 96.3(7) – Overpayment of Benefits
PL116-136, § 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 6, 2020, Michael McLachlan (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated April 24, 2020 (reference 02) that denied benefits based on a finding claimant voluntarily quit by failing to notify employer within three working days of the completion of his last work assignment.

A telephone hearing was held on May 26, 2020. The parties were properly notified of the hearing. The claimant participated personally. QPS Employment Group, Inc. (employer/respondent) participated by Hearing Representative Mai Lor. Recruiter Janine Morazan participated as a witness for employer. The administrative law judge issued a decision dated May 28, 2020, finding the appeal was untimely and that claimant had been overpaid benefits and Federal Pandemic Unemployment Compensation.

Claimant appealed the decision. The Employment Appeal Board reversed and remanded for a new hearing, finding claimant's appeal was timely. A hearing was set for August 13, 2020. However, at the time of hearing it was determined that the correct issues had not been noticed. Rather than waiving notice on those issues and continuing with the hearing, claimant chose to have a new notice issued and a new hearing set.

A new hearing was set for September 15, 2020. Claimant, Ms. Lor, and Ms. Morazan participated. Employers Exhibit 1 and Claimant's Exhibit A were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Did the claimant make a timely request for another job assignment?
- III. Was the claimant overpaid benefits?

IV. 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:

Employer is a staffing agency. Claimant's first day of employment was September 23, 2019. Claimant was assigned to work at Lineage. The assignment ended on March 13, 2020, due to a lack of work.

Claimant signed for and received a copy of employer's three-day reassignment policy on September 23, 2019. See Employer's Exhibit 1. That policy notified claimant that failure to contact employer and request reassignment within three working days of an assignment ending will constitute a voluntary quit. However, claimant did not notify employer of the assignment ending and request further assignment within three working days. The policy is consistent with Iowa law.

There was some disagreement between the parties regarding whether claimant subsequently performed work for employer for a part of one day in late July. The administrative law judge makes no finding of fact as to this, as it is not relevant to the issues noticed.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$133.00 for a total of six weeks, from the benefit week ending March 14, 2020 and continuing through the benefit week ending April 18, 2020. The total amount of benefits paid to date is \$798.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of two weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending April 18. The total amount of FPUC benefits paid to date is \$1,200.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated April 24, 2020 (reference 02) that denied benefits based on a finding claimant voluntarily quit by failing to notify employer within three working days of the completion of his last work assignment is AFFIRMED.

Iowa Code section 96.5(1)a 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. 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.

(3) For the purposes of this paragraph:

(a) "*Temporary employee*" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "*Temporary employment firm*" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(15) 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 has 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 acceptable means of communications. Working days means the normal days in which the employer is open for business.

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*,

728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The administrative law judge found Ms. Morazan's testimony to be more reliable and credible than claimant's. Factual disputes were settled accordingly. Claimant testified that he did not specifically recall signing for or receiving the three-day reassignment policy and claimed the signature on the document is not his. He also testified that he was unaware of this policy. However, claimant acknowledged he has worked for other staffing companies and is aware that staffing companies generally have such policies. On the other hand, Ms. Morazan testified that she specifically recalls meeting with claimant at his place of work, including that he was wearing a cap with a military logo or emblem on it. Claimant acknowledged that he owns and wears caps of that nature on occasion. The administrative law judge does not find it credible that claimant's signature was forged on the three-day reassignment policy, that he did not receive a copy of it, or that he was unaware of it.

Claimant signed for and received a copy of employer's three-day reassignment policy on September 23, 2019. See Employer's Exhibit 1. That policy notified claimant that failure to contact employer and request reassignment within three working days of an assignment ending will constitute a voluntary quit. However, claimant did not notify employer of the assignment ending and request further assignment within three working days. The policy is consistent with Iowa law. By failing to notify employer and request additional assignment within three working days of the assignment ending, claimant voluntarily quit. There is no indication that quitting was with good cause attributable to employer. Benefits are therefore denied effective with the benefit week ending March 14, 2020.

Iowa Code section 96.3(7) provides, in pertinent part:

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 unemployment insurance system shows claimant has received weekly benefits in the amount of \$133.00 for a total of six weeks, from the benefit week ending March 14, 2020 and continuing

through the benefit week ending April 18, 2020. The total amount of benefits paid to date is \$798.00.

Because the administrative law judge finds claimant disqualified from benefits effective with the benefit week ending March 14, 2020, the claimant has been overpaid benefits in the amount of \$798.00. Benefits shall be recovered. 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.

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...

The unemployment insurance system shows claimant has received FPUC in the amount of \$600.00 for a total of two weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending April 18. The total amount of FPUC paid to date is \$1,200.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC. Claimant has been overpaid FPUC in the amount of \$1,200.00. Claimant is required to repay that amount.

DECISION:

The decision dated April 24, 2020 (reference 02) that denied benefits based on a finding claimant voluntarily quit by failing to notify employer within three working days of the completion of his last work assignment is AFFIRMED. Benefits are withheld until claimant earns insured wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$798.00. Benefits shall be recovered. 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.

Claimant has been overpaid FPUC in the amount of \$1,200.00. Claimant is required to repay that amount.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 22, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.