

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TAMI J KURNES**

Claimant

**SEABOARD TRIUMPH FOODS LLC**

Employer

**APPEAL 20A-UI-03672-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On May 1, 2020, Tami Kurnes (claimant/appellant) filed a timely appeal from the April 29, 2020 (reference 01) unemployment insurance decision that found her ineligible for benefits.

A telephone hearing was held on May 20, 2020. The parties were properly notified of the hearing. The claimant participated personally. Seaboard Triumph Foods, LLC (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits?
- III. 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:

Claimant worked for employer full-time as food safety quality analysis worker. Claimant's first day of employment was June 10, 2019. The last day claimant worked on the job was March 7, 2020. Claimant's immediate supervisor was Kevin Malcolm. Claimant typically worked Monday through Friday, as well as some Saturdays. Claimant separated from employment on March 13, 2020. Claimant voluntarily quit on that date.

Claimant was feeling ill at work on March 7, 2020. Claimant had been ill for approximately two months by that time. She was diagnosed with bronchitis, pneumonia, strep throat, and a sinus infection. She had taken antibiotics, but those did not seem to help. On March 7, she was coughing uncontrollably and having trouble breathing while working. After work, she then went to

the ER and was given a breathing treatment. She returned to the ER on Monday, March 9, 2020, and was told she still had bronchitis and a sinus infection.

Claimant reported to a supervisor on Monday that she would be able to return to work on Wednesday. She was told to see the "big boss" immediately upon her return. Around that time, she started hearing from coworkers that supervisors were telling other employees that claimant was going to be fired.

Claimant was still sick on Wednesday and Thursday, and properly reported these absences to employer. Claimant was still sick and unable to work after that time. However, she did not further communicate with employer after that, although she was still scheduled to work. She did not call to report her absences because she was upset that supervisors were allegedly telling coworkers she would be discharged. She did not think that was professional or fair.

Claimant was not told by any supervisor that she was going to be or had been discharged. Nor did she reach out to employer to inquire as to whether she was being discharged. Claimant always properly reported when she would be out sick and was not disciplined for missing work due to properly-reported illness.

Claimant has received benefits in the amount of \$481.00 for five weeks, from the benefit week ending March 28, 2020 and continuing through the benefit week ending April 25, 2020. The total amount of benefits received to date is \$2,405.00.

Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for three weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending April 25, 2020. The total amount of FPUC benefits received to date is \$1,800.00.

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

For the reasons set forth below, the April 29, 2020 (reference 01) unemployment insurance decision that found claimant ineligible for benefits 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

**(21)** The claimant left because of dissatisfaction with the work environment.

**(22)** The claimant left because of a personality conflict with the supervisor.

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:

**(4)** The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

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. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

Claimant clearly intended to quit by failing to appear for work or report her absences beginning Friday, March 13, and continuing into the following week. Claimant quit because she was ill and because she was upset that supervisors had allegedly told coworkers she would be discharged. However, there was no indication claimant could not have continued to call in sick during the time she was sick, as she had done so in the past and not been disciplined for doing so. The administrative law judge finds claimant's reason for quitting was not her illness but her frustration with the rumors that she would be discharged.

The administrative law judge understands claimant's frustration with these rumors and agrees it would be unprofessional for supervisors to tell coworkers of her discharge, if that indeed is what happened. However, even assuming for purposes of analysis that supervisors had told coworkers claimant was to be discharged, a reasonable person would not find this to be so intolerable or detrimental as to justify quitting, particularly without first reporting the issue to employer and allowing it a chance to investigate and correct the issue.

Claimant's quitting is more aptly described as being due to a dissatisfaction with the work environment and a personality conflict with a supervisor. These reasons are presumed to be without good cause attributable to employer, and the administrative law judge finds there are without good cause in this instance.

Importantly, while claimant believed she would be discharged, she had not actually been told by a supervisor that she had been discharged. Claimant was still employed by employer at the time she voluntarily quit.

II. Was the claimant overpaid benefits?

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.

Because the administrative law judge affirms the decision that claimant is ineligible for benefits, the claimant has been overpaid benefits in the amount of \$2,405.00. 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.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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). In addition to the regular UI benefits claimant received, she also received \$1,800.00 in FPUC benefits. Claimant is required to repay those benefits.

**DECISION:**

The April 29, 2020 (reference 01) unemployment insurance decision that found claimant ineligible for benefits is AFFIRMED. Claimant is ineligible for benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$2,405.00. 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 benefits in the amount of \$1,800.00. Claimant is required to repay those benefits.



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

May 26, 2020  
Decision Dated and Mailed

abd/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 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.