

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATRINA M ANTONELLI**  
Claimant

**APPEAL 21A-UI-05730-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 01/10/21  
Claimant: Respondent (2)**

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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

**STATEMENT OF THE CASE:**

On February 22, 2021, Fareway Stores Inc. (employer/respondent) filed an appeal from the February 18, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on July 14, 2020 without a showing of misconduct.

A telephone hearing was held on April 28, 2021. The parties were properly notified of the hearing. Employer participated by HR Generalist Stephanie Rohrer. Assistant Grocery Manager Lucas Krause participated as a witness for employer. Katrina Antonelli (claimant/respondent) participated personally. Frank Antonelli participated as a witness for claimant.

Employer's Exhibit 1 admitted. 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. Is the claimant able to and available for work?
- III. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- 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:

Claimant's first day of employment was August 20, 2018. Claimant's immediate supervisor was Krause. Claimant worked for employer as a part-time cashier. The last day claimant worked on the job was July 8, 2020. Claimant separated from employment on August 10, 2020.

Claimant learned around the end of May that she needed to have a surgical procedure due to an injury. She continued to work with restrictions after that time but had increasing difficulty doing so. Around mid-July 2020, claimant spoke with Store Manager Chris, who told claimant he was going to "let her go" due to the medical issues. Claimant later spoke with Krause about being out of work until the end of the year for the surgery and recovery. Krause permanently removed claimant from the schedule as of August 10, 2020 and indicated she was eligible for rehire.

Claimant has not since attempted to return to work with employer or elsewhere. Claimant has not been able to work since her surgery, as she continues to have substantial pain and has difficulty walking or standing for more than a short period of time.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$130.00 for a total of ten weeks, from the benefit week ending January 16, 2021 and continuing through the benefit week ending March 20, 2021. The total amount of benefits paid to date is \$1,300.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$300.00 for a total of ten weeks during that same period. The total amount of FPUC paid to date is \$3,000.00.

The administrative record indicates there was no formal fact-finding process and only a cold-call for information was made to employer prior to the decision being issued.

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

For the reasons set forth below, the February 18, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on July 14, 2020 without a showing of misconduct is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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:

- d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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. Benefits are therefore denied from the date of separation.

Claimant left employment because of injury upon the advice of a licensed and practicing physician and upon knowledge of the necessity for absence immediately notified the employer. However, claimant has not recovered from the injury and returned to the employer to offer to perform services. Her leaving was therefore without good cause attributable to employer.

Because claimant is disqualified from benefits, the issue of whether she is able to and available for work need not be addressed.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

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.

(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.

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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$130.00 for a total of ten weeks, from the benefit week ending January 16, 2021 and continuing through the benefit week ending March 20, 2021. The total amount of benefits paid to date is \$1,300.00. Because the administrative law judge now finds the claimant disqualified from benefits from the date of separation, she has been overpaid benefits in that amount.

The administrative record indicates there was no formal fact-finding process and only a cold-call for information was made to employer prior to the decision being issued. Because employer did not participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant. However, neither shall employer be charged for benefits paid, as it did not have a reasonable opportunity to participate in the fact-finding process. Benefits shall therefore be charged to the 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...

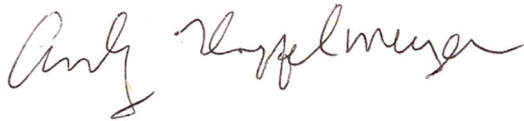
Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$3,000.00.

**The administrative law judge notes claimant may request a waiver of the FPUC overpayment amount. There is information below on how to request a waiver.**

**DECISION:**

The February 18, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant was dismissed from work on July 14, 2020 without a showing of misconduct is REVERSED. Claimant voluntarily left employment without good cause attributable to employer. She is therefore disqualified from benefits from the date of separation from employment.

Claimant has been overpaid regular unemployment insurance benefits in the amount of \$1,300.00. However, those benefits shall not be recovered and employer shall not be charged. Claimant has been overpaid FPUC in the amount of \$3,000.00.



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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 7, 2021

Decision Dated and Mailed

abd/kmj

**Note to Claimant:**

This decision determines you have been overpaid FPUC and/or PEUC under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found 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.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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>.