

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRITTANY TAYLOR

Claimant

TEAM STAFFING SOLUTIONS INC

Employer

APPEAL NO. 21A-UI-11919-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21

Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) – Recovery of Overpaid Regular Benefits and LWAP

Public Law 116-136, Section 2104 – Federal Pandemic Unemployment Compensation

Public Law 116-136, Section 2017 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 23, 2021, reference 01, decision that held the claimant was eligible for benefits, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant separated from the temporary employment agency on March 17, 2020 with good cause attributable to the employer. After due notice was issued, a hearing was held on July 19, 2021. Claimant, Brittany Taylor, participated. Sarah Fiedler represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KFFV, the claimant's fact-finding interview questionnaire, and the SIDES protest.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.

Whether the claimant was overpaid regular unemployment insurance benefits.

Whether the claimant must repay overpaid regular benefits.

Whether the employer's account may be charged.

Whether the claimant was overpaid FPUC, PEUC and LWAP benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. In October 2019, the claimant began a full-time temp-to-hire work assignment at Raining Rose in Cedar Rapids. At Raining Rose, the claimant worked four 12-hour shifts per week, but the work days changed from week to week. The claimant last performed work in the Raining Rose assignment on March 17, 2020. While the claimant worked in the Raining Rose assignment, she resided in North Liberty and commuted to the Cedar Rapids assignment. The claimant dealt with staff at the employer's Hiawatha branch office. While the claimant was in the Raining Rose assignment, Team Staffing closed its Hiawatha branch with the branch in Iowa City.

Prior to March 17, 2020, the claimant notified Team Staffing that she would be leaving the Raining Rose assignment in connection with her planned move to Muscatine. The claimant provided March 25, 2020 as her last day in the Raining Rose assignment. On March 4, 2020, the claimant and Team Staffing representative Jessica Mendoza discussed the possibility of the claimant working in an assignment at HNI, doing business as Hon and Allsteel. The claimant participated in an interview regarding a potential assignment at HNI and underwent drug testing as a prerequisite to be considered for an assignment at HNI. The discussion regarding HNI did not progress to an offer of work at HNI. The claimant was never given a start date for a HNI/Hon assignment. A potential HNI assignment was not addressed further.

On March 20, 2020, the claimant notified Team Staffing that she was unable to continue in the Raining Rose assignment until the March 25, 2020 effective quit date. The claimant advised that she had been exposed to COVID-19 and needed to quarantine for two weeks. Thus ended the Raining Rose assignment. The claimant was six months into a pregnancy at the time she separated from the Raining Rose assignment.

The claimant's 14-day quarantine period would have ended on Friday, April 3, 2020, when the claimant received a negative COVID-19 test result. Based on the end-of-assignment notification policy that Team Staffing had the claimant acknowledge with her signature at the start of the Raining Rose assignment, Team Staffing expected the claimant to contact Team Staffing with three working days of the end of her quarantine period to request a new assignment or be deemed to have voluntarily quit the employment and risk being disqualified for unemployment insurance benefits. Team Staffing had provided the claimant with a copy of the assignment she acknowledged with her signature.

After the claimant separated from the Raining Rose assignment, Team Staffing did not hear from the claimant again until June 2020, after Team Staffing's Iowa City personnel sent a message to the claimant on June 4, 2020 asking whether she was ready to return to work. When the employer spoke with the claimant later in June 2020, the claimant indicated Team Staffing did not have any assignments the claimant was interested in pursuing. The administrative law judge notes this discussion would have taken place at or about the time when the claimant was scheduled to give birth.

The claimant asserts she commenced trying to contact Team Staffing on April 6, 2020, made contact with Team Staffing on April 10, 2020, and was told at that time all Team Staffing assignments were put on hold due to COVID-19. Team Staffing had not put on hold and continued to conduct business.

The claimant had established an original claim for unemployment insurance benefits that was effective March 22, 2020. Team Staffing was a base period employer for purposes of the March 22, 2020 original claim. Iowa Workforce Development set the week benefit amount for regular benefits at \$152.00. The claimant received \$2,952.10 in regular benefits for the period of March 22, 2020 through August 8, 2020. The claimant also received \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for 17 weeks between March 29, 2020 and July 25, 2020, as well as \$1,800.00 in Lost Wage Assistance Payments (LWAP) for six weeks between July 25, 2020 and September 5, 2020. The claimant also received \$1,976.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 13 weeks between August 9, 2020 and November 7, 2020, as well as \$3,648.00 in PEUC benefits for 24 weeks between December 27, 2020 and June 12, 2021, when the State of Iowa discontinued its participation in the CARES Act federal unemployment insurance benefits programs. The claimant also received \$7,200.00 in FPUC benefits for the same 24 weeks.

On or about April 14, 2021, an Iowa Workforce Development Benefits Bureau deputy spoke to the claimant regarding her separation from the Team Staffing employment as part of a cold-call fact-finding interview. The claimant told the deputy that she had relocated, that COVID-19 then hit and that all jobs from Team Staffing were put on hold. The assertion that Team Staff had put all jobs on hold was not true. Team Staffing was not contacted to participate in a fact-finding interview. Instead, the deputy relied upon the cursory information contained in the employer protest submitted via SIDES, which included the following narrative:

Claimant's assignment was completed; she notified Team that she had potentially come in to contact with someone with Covid so she was going to be self-quarantining and then moving; she did not ask for other work at that time or check in for other work within three days of what would have been 14 days after her self-quarantine.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(j) 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(19) provides:

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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

The weight of the evidence in the record indicates a voluntary quit without good cause attributable to the employer. The claimant did not complete the Raining Rose assignment, but instead voluntarily quit the Raining Rose assignment effective March 20, 2020 in connection with her planned move from North Liberty to Muscatine. The claimant had given notice of a March 25, 2020 effective quit date and moved the quit date up to March 20, 2020 in connection with her exposure to COVID-19. The weight of the evidence does not support the claimant's assertion that Team Staffing offered her an assignment at HNI/Hon. The weight of the evidence does not support the claimant's assertion that she contacted the employer on April 6, 2020 and April 10, 2020 or that she was told on April 10, 2020 that the employer had put all assignments on hold.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that March 20, 2020 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. Effective March 20,

2020, the claimant was disqualified for unemployment insurance benefits until she worked in and was paid wages for insured work equal to 10 times her weekly benefit amount.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$2,952.10 in regular benefits for the period of March 22, 2020 through August 8, 2020, but this decision disqualifies her for those benefits. The benefits constitute an overpayment of benefits. The employer was denied the opportunity to participate in a fact-finding interview. The claimant made one or more intentionally misleading statement of material fact in connection with the fact-finding interview. Based on the misrepresentation, the claimant is required to repay the overpaid regular benefits. The employer's account will not be charged for benefits based on work performed by the claimant on or before March 20, 2020. The employer shall be relieved of charges for benefits already paid to the claimant in connection with the March 20, 2020 original claim.

Because the claimant was disqualified for regular benefits, the \$1,800.00 in Lost Wage Assistance Payments (LWAP) the claimant received for the period of July 26, 2020 through September 5, 2020 is an overpayment of benefits that the claimant must repay.

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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Because the claimant was disqualified for regular benefits, the claimant is also disqualified for the \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for 17 weeks between March 29, 2020 and July 25 2020 and the \$7,200.00 in FPUC benefits the claimant received for the period of December 27, 2020 through June 12, 2021. The claimant must repay the overpaid FPUC benefits unless she applies for and is approved for a waiver of FPUC benefits. See below.

PL 116-136, Section 2107(e) provides as follows:

(e) Fraud and overpayments

(1) In general

If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of pandemic emergency

unemployment compensation under this section to which such individual was not entitled, such individual—

- (A) shall be ineligible for further pandemic emergency unemployment compensation under this section in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and
- (B) shall be subject to prosecution under [section 1001 of title 18](#), United States Code.

(2) Repayment

In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

- (A) the payment of such pandemic emergency unemployment compensation was without fault on the part of any such individual; and
- (B) such repayment would be contrary to equity and good conscience.

(3) Recovery by State agency

(A) In general

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing

No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review

Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Because the clamant was disqualified for regular benefits, the claimant is also disqualified for the \$1,976.00 in PEUC benefits the claimant received for 13 weeks between August 9, 2020 and November 7, 2020, and the \$3,648.00 in PEUC benefits the claimant received for 24 weeks between December 27, 2020 and June 12, 2021 are overpayments of benefits. The claimant must repay the overpaid PEUC benefits unless the claimant applies for and is approved for waiver of repayment of PEUC benefits. See below.

DECISION:

The April 23, 2021, reference 01, decision is reversed. The claimant voluntarily quit on March 20, 2020 without good cause attributable to the employer. The claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The employer's account shall not be charged for benefits based on wages earned by the claimant on or before March 20, 2020. The employer's account shall be relieved of charges for regular benefits overpaid in connection with the March 22, 2020 original claim. The claimant is overpaid \$2,952.10 in regular benefits for the period of March 22, 2020 through August 8, 2020 and must repay the benefits. The claimant is overpaid \$1,800.00 in LWAP benefits for six weeks between July 26, 2020 and September 5, 2020 and must repay the benefits. The claimant is overpaid \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for 17 weeks between March 29, 2020 and July 25, 2020 and \$7,200.00 in FPUC benefits for the period of December 27, 2020 through June 12, 2021. The claimant must repay the overpaid FPUC benefits unless she applies for and is approved for a waiver of FPUC benefits. See below. The claimant is overpaid \$1,976.00 in PEUC benefits for 13 weeks between August 9, 2020 and November 7, 2020, and \$3,648.00 in PEUC benefits for 24 weeks between December 27, 2020 and June 12, 2021. The claimant must repay the overpaid PEUC benefits unless the claimant applies for and is approved for waiver of repayment of PEUC benefits. See below.



James E. Timberland
Administrative Law Judge

July 30, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you have been overpaid FPUC 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>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Note to Claimant: This decision determines you have been overpaid 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>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.