

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG A NELSON
Claimant

APPEAL 21A-UI-18155-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

**OC: 05/30/21
Claimant: Respondent (2)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104 - Federal Pandemic Unemployment Compensation
Iowa Admin. Code r. 871-24.25(4) - Absent Three Days with no Notice
Iowa Admin. Code r. 871-24.25(20) - Compelling Personal Reasons > 10 Days
Iowa Admin. Code r. 871-24.25(28) - Reprimand
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Des Moines Independent Community School District, filed an appeal from the August 12, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon finding the April 6, 2021 dismissal from work was not for willful or deliberate misconduct. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 22, 2021. The claimant, Craig Nelson, failed to respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing. The employer, participated through Rhonda Wagoner and Tiffany O'Hara. Judicial notice was taken of the administrative file. Claimant's twenty-six pages of exhibits and Employer's Exhibits 1-8 were admitted. Judicial notice was taken of the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?
Was the claimant overpaid benefits?
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
Is the claimant eligible for FPUC?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full-time, with a set schedule as a science/horticultural teacher, starting August 16, 2007 through her last day worked on May 10, 2020, and was discharged from

employment on April 6, 2021 for: (1) refusal to accept transfer which resulted from a finding of theft, gross insubordination, violation of purchasing policy, failure to account for district property, failure to implement cash controls, violation of district prohibition on comingling of funds, and violation of district nepotism policy; (2) being absent without leave; (3) being insubordinate for defying directives to report to work following unpaid suspension; and (4) job abandonment.

Claimant was placed on a paid leave of absence from May 11, 2020 through January 17, 2021, while it conducted an investigation of allegations against claimant. The investigation revealed a number of policy violations. See Employer's Exhibit 2. Employer has an employee handbook, which they are provided annual updates. Employee also have access to an online version. Employer is aware of the policies. Effective January 18, 2021 through February 12, 2021, employee was placed on an unpaid leave of absence as a twenty-day suspension without pay for discipline for the policy violations. Claimant was to report back to work on February 15, 2021, when he would be a full-time float science teacher, still teaching science, but no longer teaching horticultural courses.

Claimant came in on February 15, 2021, backed up all of his personal effects and left, never to return. Despite repeated efforts to communicate with and contact claimant, claimant did not respond to employer. Employer mad a recommendation to terminate his employment, as set forth above, with the school board terminating the contract on April 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant breached numerous policies. Employee was disciplined for the misconduct, a twenty-day unpaid suspension. After the discipline, the employee failed to report back to work.

Iowa Admin. Code r. 871-24.25(20) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(28) The claimant left after being reprimanded.

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).

After being suspended, claimant was to report to work on February 15, 2021. Claimant failed to report to work, call to work for more than three consecutive days, for more than ten working days and after the discipline, at all. Claimant didn't report to work from February 15, 2021 through the separation date of April 6, 2021.

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.

Because the claimant’s separation was disqualifying, benefits were paid to which he 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. Benefits were not received due to fraud or willful misrepresentation by claimant. The employer did not participate in the fact-finding interview and in providing detailed documentation. Thus, claimant is not obligated to repay to the agency the benefits he received and the employer’s account is not to be charged.

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 responded to the notice of a fact-finding interview by submitting detailed documentation and participating in the interview. 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 nor for failing to participate in the interview. Employer thus cannot be charged. Since employer is not to be charged, the overpayment is absorbed by the fund. Since claimant is not entitled to receive UI, he is also disqualified from receiving FPUC.

DECISION:

The August 12, 2021, (reference 01) unemployment insurance decision is **REVERSED**. Claimant voluntarily quit without good cause. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$7,395.00 but is not obligated to repay the agency those benefits. The employer’s account shall not be charged as they participated in fact finding. Rather, the overpayment should be charged to the fund. The question on FPUC becomes moot as claimant is not entitled to UI benefits.



Darrin T. Hamilton
Administrative Law Judge

November 10, 2021
Decision Dated and Mailed

dh/kmj