

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHNNY ANGSOUVAN
Claimant

APPEAL 22R-UI-03450-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELPLAST AMERICA INC
Employer

**OC: 05/16/21
Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Elplast America Inc., the employer/appellant, filed an appeal from the August 10, 2021, (reference 01) unemployment insurance (UI) decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for October 8, 2021 at 2:00 p.m. The hearing was rescheduled to October 22, 2021 at 9:00 a.m. at the employer's request. The employer did not provide a telephone number at which it could be reached for the scheduled hearing, and did not call in during the fifteen-minute grace period. No hearing was held, and the employer's appeal was dismissed.

The employer appealed to the Employment Appeal Board (EAB). The EAB remanded (sent back) the case to the Appeals Bureau of Iowa Workforce Development (IWD) for a new hearing. A new hearing was scheduled for March 24, 2022 at 10:00 a.m. The parties were properly notified of the hearing. The employer participated through Sheila Schmidt, human resources manager. Mr. Angsouvan did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer discharge Mr. Angsouvan from employment for disqualifying job-related misconduct, or did he voluntarily quit without good cause attributable to the employer?
Was Mr. Angsouvan overpaid REGULAR (state) UI benefits?
Was Mr. Angsouvan overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits?
If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Angsouvan began working for the employer on December 11, 2020. He worked as a full-time production

and quality technician. On December 28, 2020, Mr. Angsouvan left work and did not return. On December 30, Mr. Angsouvan's supervisor sent an email to other management letting them know that Mr. Angsouvan had left work and had not returned. Mr. Angsouvan did not have a disciplinary record and the employer did not terminate his employment.

Mr. Angsouvan has received REGULAR (state) UI benefits in the gross amount of \$39.00 for the week of December 27, 2020 to January 2, 2021. Mr. Angsouvan received Pandemic Emergency Unemployment Compensation (PEUC) benefits in the gross \$8,227.00 for 19 weeks between January 3, 2021 and May 15, 2021. Mr. Angsouvan has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$6,000 between December 27, 2020 and May 15, 2021. The employer did not participate in the fact-finding interview.

IWD has not issued a decision about whether Mr. Angsouvan has been overpaid PEUC benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Angsouvan's separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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(4) 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.

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). The 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).

In this case, Mr. Angsouvan left work on December 28, 2020 and did not return. Mr. Angsouvan quit. Mr. Angsouvan did not participate in the hearing to provide a reason for his leaving. Mr. Angsouvan has not established that his leaving was for good cause attributable to the employer. Benefits are denied.

The administrative law judge further concludes: Mr. Angsouvan has been overpaid REGULAR UI benefits in the gross amount of \$39.00, and he has been overpaid FPUC benefits in the gross amount of \$6,000.00.

Iowa Code §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 un rebutted 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.

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...

Mr. Angsouvan has been overpaid REGULAR UI benefits in the amount of \$39.00 as he is not qualified and/or is ineligible to receive REGULAR UI benefits as of December 28, 2020 when he quit. Since the employer did not participate in the fact-finding interview, Mr. Angsouvan should not be required to repay these benefits.

Because Mr. Angsouvan is disqualified from receiving regular UI benefits, he is also disqualified from receiving FPUC benefits. While Iowa law does not require a claimant to repay REGULAR (state) UI benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC benefits. Therefore, the determination of whether Mr. Angsouvan must repay the FPUC benefits does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that Mr. Angsouvan has been overpaid FPUC benefits in the gross amount of \$6,000.00.

DECISION:

The August 10, 2021, (reference 01) unemployment insurance decision is REVERSED. Mr. Angsouvan voluntarily left his employment without good cause attributable to the employer. 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.

Mr. Angsouvan has been overpaid REGULAR (state) UI benefits in the gross amount of \$39.00. However, since the employer did not participate in the fact-finding interview, Mr. Angsouvan is not required to repay these benefits.

Mr. Angsouvan has been overpaid FPUC benefits in the gross amount of \$6,000.00, which must be repaid.

REMAND:

The issue of whether Mr. Angsouvan has been overpayment PEUC benefits is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 4, 2022
Decision Dated and Mailed

dz/mh

NOTE TO MR. BULS:

- This decision determines you have been overpaid FPUC 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.
- **You may also request a waiver of this overpayment 1) by filing an appeal to the EAB, 2) applying for a waiver online, or 3) applying for a waiver in writing by mail.**
- The **online request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written request** must include the following information:
 - Your name & address.
 - Decision number/date of decision.
 - Dollar amount of overpayment requested for waiver.
 - Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received