

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC ROBINSON

Claimant

AT&T MOBILITY SERVICES LLC

Employer

APPEAL 21A-UI-07914-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/21

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
IAC R. 871-24.10 – Employer participation
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, SEC. 2104

STATEMENT OF THE CASE:

The employer filed an appeal from the March 11, 2021 unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2021. Claimant participated personally. Employer participated through hearing representative Alice Smolsky and employee Matt Breitbach.

ISSUES:

Did the claimant quit for good cause?
Was the claimant fired for misconduct?
Was the claimant overpaid benefits?
Is the claimant required to repay any overpayment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 24, 2020. Claimant's last day worked was March 18, 2020 with the outbreak of the COVID-19 pandemic. The employer provided claimant with eight weeks of paid leave at that time. The claimant was to return on May 17, 2020, at which time he did not. The employer extended claimant's leave as unpaid leave. On November 27, 2020, after over six months of unpaid leave, the employer sent letter to claimant at his last address on file in Cedar Rapids, Iowa. That letter explained that claimant must return to work in order to keep his position. Claimant never responded. Claimant was sent a letter stating that his employment had been terminated, at which time claimant sent a text message stating that he was ready to return. The employer was unable to return him to work because his position had been filled. The employer's representative TALX never received a fact finding form and as such did not participate in the fact finding. On February 12, 2021 and February 17, 2021, Iowa Workforce Development did request from TALX some additional information, which it was

provided by a claims person, but not the hearing representative. The employer's representative never participated in fact finding because it did not receive notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not totally or partially unemployed during the time in question.

As a preliminary matter, the administrative law judge finds that the claimant was not terminated for misconduct.

Iowa Code section 96.5(1) 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. 871-24.22(2)j(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant was first on a paid leave of absence for eight weeks. Since he was fully paid he was not unemployed during this time. At the end of that time he transitioned to an unpaid leave of absence, mutually agreed upon by him and the employer. As a voluntary leave of absence it is considered a period of voluntary unemployment and the claimant is not eligible during this time.

The employer allowed that unpaid leave to go through November when it then ended the claimant's voluntary leave of absence, and attempted to recall claimant by letter to his last address in Cedar Rapids. Claimant testified that he lived in Cedar Rapids but was in Iowa City because it was closer to his doctor. Claimant testified that he never received the employer's notice and, as such, failed to respond to the employer's notice. Since the claimant's mutually agreed upon leave of absence ended, and he failed to return to work, he is considered as having voluntarily quit and therefore is ineligible for benefits. Benefits are denied.

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) (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 reveal on appeal regarding the issue of the individuals separation from employment.

PL 116-136, 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—

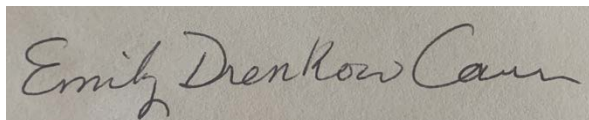
(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

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

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits. The benefits were not received due to any fraud or willful misrepresentation by the claimant. The employer did not participate in the initial determination to award benefits because it did not receive notice. As such, benefits shall not be recovered from the claimant.

DECISION:

The unemployment insurance decision is reversed. Benefits are denied. The claimant was overpaid benefits, but is not required to repay those benefits.



Emily Drenkow Carr
Administrative Law Judge

June 17, 2021
Decision Dated and Mailed

ed/scn