

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTALLE M BLANTON
Claimant

YOUNG MENS CHRISTIAN ASSOCIATION
Employer

APPEAL 21A-UI-18742-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/18/21
Claimant: Appellant (2R)**

Iowa Code § 96.5(1) – Voluntary Quitting of Work
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 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the August 13, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits based upon claimant's discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on October 14, 2021. The claimant did not participate. The employer participated through witness Amy Goodwin. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer?
Has the claimant been overpaid any regular unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?
Was the claimant overpaid any FPUC benefits effective April 18, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a member service representative from November 2, 2020 until November 25, 2020 when she voluntarily quit the position. There was work available for the claimant; however, she failed to show up for continued scheduled shifts.

On August 4, 2021, the employer received a written questionnaire regarding the separation from employment. The employer returned the questionnaire via email on August 6, 2021. The employer reported to Iowa Workforce Development that the claimant voluntarily quit her employment and that continued work would have been available to her.

Claimant's administrative records establish that effective April 18, 2021 through May 8, 2021 claimant received \$438.00 in regular unemployment insurance benefits (\$146.00 for the week-ending April 24, 2021; \$146.00 for the week-ending May 1, 2021; and \$146.00 for the week-ending May 8, 2021. Claimant received \$900.00 in FPUC benefits from April 18, 2021 through

May 8, 2021 (\$300.00 per week for the week-ending April 24, 2021, May 1, 2021 and May 8, 2021).

Claimant's separation from employment occurred during her previous claim year which was effective March 22, 2020 through March 21, 2021. The issue of whether this separation from employment was disqualifying in claimant's March 22, 2020 claim year and whether she is overpaid any regular, FPUC, PEUC or LWA benefits during her March 22, 2020 claim year is remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

Claimant had an intention to quit and carried out that intention by failing to come to her scheduled shifts. As such, 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 (Ia. Dist. Ct. App. 1973).

Iowa Admin. Code r. 871-24.25(27) 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:

- (27) The claimant left rather than perform the assigned work as instructed.

In this case, the claimant left rather than performing the work that was assigned to her. There was continued work available to her if she would not have voluntarily quit. As such, her November 25, 2020 is disqualifying and regular unemployment insurance benefits are denied.

Because benefits are denied, the issues of overpayment and chargeability must be addressed.

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 after her separation from employment which she was not entitled to. The original claim year adjudicated in this case began effective April 18, 2021. As of April 18, 2021, the claimant was paid regular unemployment insurance benefits of \$438.00 for the three weeks between April 18, 2021 and May 8, 2021.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those 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. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7).

In this case, the employer provided written documentation when it answered the questionnaire stating that the claimant voluntarily quit her employment. As such, the employer provided sufficient detailed factual information of the quantity and quality that, if un rebutted, would be sufficient to result in a decision favorable to the employer. Given these facts, the employer's account shall not be charged for benefits paid and the claimant is required to repay the benefits she received from April 18, 2021 through May 8, 2021 in the amount of \$438.00.

The next issue is whether the claimant is overpaid FPUC benefits effective April 18, 2021. The administrative law judge finds that she is overpaid FPUC benefits.

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...

In this case, the claimant received FPUC benefits but was not eligible for those benefits due to her disqualifying separation from employment. Whether the employer participates in a fact-finding interview does not relieve a party from repayment of FPUC benefits. As such, the claimant is overpaid FPUC benefits in the amount of \$900.00 from April 18, 2021 through May 8, 2021. Those benefits must be repaid to the agency unless a waiver is requested and granted.

DECISION:

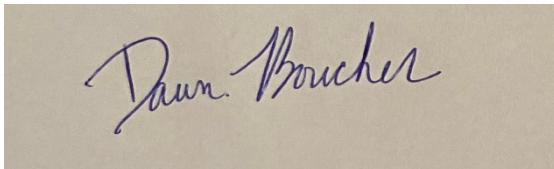
The August 13, 2021 (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment on November 25, 2020 was disqualifying. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after her November 25, 2020 separation date, and provided she is otherwise eligible.

The claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa during her claim year that was effective April 18, 2021 in the amount of \$438.00 and is obligated to repay the agency those benefits received. The employer's account may not be charged for benefits paid as it sufficiently participated in writing for the fact-finding interview.

The claimant is overpaid FPUC benefits during her claim year that was effective April 18, 2021 in the amount of \$900.00 for the three weeks between April 18, 2021 and May 8, 2021. Those benefits must be repaid unless a waiver is requested and granted.

REMAND:

Claimant's separation from employment occurred during her previous claim year which was effective March 22, 2020 through March 21, 2021. The issue of whether this separation from employment was disqualifying in claimant's March 22, 2020 claim year and whether she is overpaid any regular, FPUC, PEUC or LWA benefits during her March 22, 2020 claim year is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

October 20, 2021
Decision Dated and Mailed

db/kmj