

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SETH D FREEZE**  
Claimant

**GEORGEN AUTO LLC**  
Employer

**APPEAL 21A-UI-20117-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-Finding  
Public Law 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment – Lost Wages Assistance Program

**STATEMENT OF THE CASE:**

On September 9, 2021, employer Georgen Auto, L.L.C., filed an appeal from the September 7, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant was discharged on June 5, 2020, for no disqualifying reason. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Tuesday, November 2, 2021. Appeal numbers 21A-UI-20117-LJ-T and 21A-UI-20118-LJ-T were heard together and created one record. The claimant, Seth D. Freeze, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Georgen Auto, L.L.C., participated through John Georgen, Owner; and Stephanie Georgen. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?  
Has the claimant been overpaid Federal Pandemic Unemployment Compensation ("FPUC") benefits?  
Has the claimant been overpaid Lost Wages Assistance Program ("LWAP") benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer Georgen Auto, L.L.C., hired claimant back in 2008. Claimant worked for the employer as a full-time auto technician. Claimant continued in this employment until March 2020, when he quit due to the COVID-19 pandemic.

In March 2020, claimant elected to take a leave of absence from work. He did not formally give Georgen a reason for this leave of absence. However, claimant indicated during banter around the shop that he could make more on unemployment than he could reporting to work, so he was opting to stay home and collect unemployment. The employer remained open throughout the pandemic and had work available for the claimant, had he chosen to work.

Claimant returned to work on June 1, 2020. He worked three days – June 1, June 2, and June 3 – and then stopped reporting to work and communicating with the employer entirely. Georgen tried to contact claimant via telephone and text message, and claimant would not answer calls, return calls, or respond to text messages. Finally, Georgen sent claimant a text message that he was going to have to hire someone to fill his position because claimant was refusing to come back to work. Claimant did not acknowledge this message.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$6,112.00, since filing a claim with an effective date of March 22, 2020, for the sixteen weeks ending September 19, 2020. The administrative record establishes that claimant has received FPUC benefits in the amount of \$4,800.00 for the eight weeks ending July 25, 2020. The administrative record reflects that claimant has received LWAP benefits in the amount of \$1,800.00 for the six weeks ending September 5, 2020. The administrative record also establishes that the employer did not participate in the fact-finding interview through no fault of its own. Georgen never received a telephone call for the fact-finding interview and did not have an opportunity to participate.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant separated without good cause attributable to the employer. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.25 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:

(25) The claimant left to take a vacation.

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

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 evidence presented during the hearing supports a finding that the claimant quit his employment. He failed to report to work after a brief, three-day return following his leave of absence, and he failed to either proactively make or even return any contact with the employer.

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). Here, the evidence in the record indicates claimant's reason for leaving his position with the employer was that claimant desired an unemployment-benefits-funded break from working. This is neither the purpose of unemployment insurance benefits nor is it a good-cause reason attributable to the employer. Benefits are withheld.

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. 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 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.

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. The benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, the employer did not participate in the fact-finding interview. Thus, claimant is not obligated to repay to the agency the benefits he received.

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 had its up-to-date business telephone number on file with the agency for the fact-finding 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. Instead, benefits were paid because employer did not receive a call from the agency. Employer thus cannot be charged. Since neither party is to be charged then the overpayment is absorbed by the fund.

The next issues to be determined are whether claimant was eligible for FPUC and whether claimant has been overpaid FPUC. For the reasons that follow, the administrative law judge concludes claimant was not eligible for FPUC and was overpaid FPUC, which must be repaid.

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...

Because claimant is disqualified from receiving unemployment insurance benefits, they are also disqualified from receiving FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$4,800.00 for the eight weeks ending July 25, 2020. Claimant must repay these benefits.

Finally, the administrative law judge must determine whether claimant has been overpaid LWAP benefits. 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.

The decision that denied claimant regular unemployment insurance benefits remains in effect. Because claimant is not eligible for regular UI benefits, claimant is also not eligible for LWAP benefits. Therefore, the claimant has received LWAP benefits to which they were not entitled. The administrative law judge concludes that the claimant has been overpaid LWAP benefits in the amount of \$1,800.00, and those benefits must be repaid.

The issue of whether claimant is eligible for the benefits he received between March 22, 2020, and May 30, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for further investigation and determination.

The issue of whether claimant improperly claimed unemployment insurance benefits in violation of the law is remanded to the Integrity Bureau of Iowa Workforce Development for further investigation.

**DECISION:**

The September 7, 2021 (reference 01) unemployment insurance decision is reversed.

Claimant separated from 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.

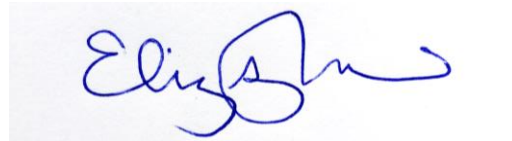
The claimant has been overpaid unemployment insurance benefits in the amount of \$6,112.00 and is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview through no fault of its own and its account shall not be charged. The overpayment shall be absorbed by the fund.

The claimant has been overpaid FPUC benefits in the amount of \$4,800.00 and is obligated to repay the agency those benefits. The claimant has been overpaid LWAP benefits in the amount of \$1,800.00 and is obligated to repay the agency those benefits.

**REMAND:**

The issue of whether claimant is eligible for the benefits he received between March 22, 2020, and May 30, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for further investigation and determination.

The issue of whether claimant improperly claimed unemployment insurance benefits in violation of the law is remanded to the Integrity Bureau of Iowa Workforce Development for further investigation.



---

Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

November 30, 2021

---

Decision Dated and Mailed

lj/abd