

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANDOLYN J WORKMAN
Claimant

APPEAL NO. 20A-UI-05206-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Shandolyn Workman filed a timely appeal from the May 29, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the Ms. Workman voluntarily quit on April 2, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 7, 2020. Ms. Workman participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Candice Sweeten. Exhibits 1, 2, 3 and A were received into evidence. The administrative law judge took official notice of the Agency administrative records of benefits paid to the claimant (DBRO and KPYX).

ISSUES:

Whether the claimant voluntarily quit the employment without good cause attributable to the employer.

Whether the claimant was overpaid regular benefits.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shandolyn Workman began her employment with Care Initiatives in June 2018 and last performed work for the employer on April 2, 2020. Throughout the employment, Ms. Workman has been a traveling Certified Nursing Assistant. From the start of the employment, Ms. Workman held PRN or on-call status. Ms. Workman was able to set the hours she was available for work and designate the Care Initiatives facilities where she was willing to work. The employer would use a software application to notify Ms. Workman of available shifts. The employer would usually provide notice a week or two before the scheduled shift. The employer would also communicate one-on-one with Ms. Workman regarding available shifts as needed. Despite the PRN status, Ms. Workman generally worked three shifts per week. Ms. Workman has at all relevant times resided in New Hampton, Missouri. During the last year of the employment, Ms. Workman performed work for the employer only at three locations: Corydon, Osceola, and Corning.

These three facilities were within an 90-minute drive from Ms. Workman's home in Missouri. At the start of the employment, Ms. Workman had sometimes driven to Care Initiatives facilities up to five hours away from her home. During the last year of the employment, Ms. Workman worked only second-shift hours, 2:00 p.m. to 10:00 p.m. At the start of the employment, Ms. Workman had worked overnight shifts, 10:00 p.m. to 6:00 a.m. Ms. Workman's restriction of her availability to 2:00 p.m. to 10:00 p.m. shifts at Care Initiatives facilities within a 90-minute drive from her home took place in the context of Ms. Workman's pregnancy and the birth of her child. Once Ms. Workman's child was born, Ms. Workman's mother provided childcare when Ms. Workman was away at work. Ms. Workman's mother is 48 years old and suffers from chronic obstructive pulmonary disease (COPD) and asthma.

Ms. Workman has elected not to accept any shifts with Care Initiatives since the shift that she completed on April 2, 2020. Ms. Workman asserts that her county of residence, Harrison County, Missouri imposed a "stay at home" order effective March 30, 2020. Ms. Workman also asserts that the government of State of Iowa did not want people to travel across state lines. However, neither of these concerns prevented Ms. Workman from working the shift on April 2, 2020. Ms. Workman also asserts that Care Initiatives did not have any additional work for her in April at the three locations where she usually worked. However, the employer had 2:00 p.m. to 10:00 p.m. shifts available in Corydon on April 6, 9 and 11 that Ms. Workman passed up. The employer fills shifts on a first-come/first-served basis. Another CNA claimed the April 6 shift. The employer had no work for Ms. Workman at her three usual facilities during the week of April 12-18, 2020. The employer subsequently contacted Ms. Workman by text message on May 15, 2020 regarding her availability to work at 2:00 p.m. to 10:00 p.m. shifts at Osceola on May 16 and 17, but Ms. Workman did not respond to that message. Earlier that same day, the employer contacted Ms. Workman about other shifts outside Ms. Workman's 2:00 p.m. to 10:00 p.m. availability. Also in May, the employer notified Ms. Workman via the software application of a 2:00 p.m. to 10:00 p.m. shift in Corydon, but Ms. Workman passed up the shift.

Ms. Workman's decision not to accept additional shifts beyond April 2, 2020, was also based on her mother's health, Ms. Workman's childcare needs, and Ms. Workman's concern for her baby's health. Ms. Workman asserts that her mother was concerned about contracting COVID-19 and declined to continue to provide childcare so long as Ms. Workman continued to travel to nursing facilities. None of the nursing facilities where Ms. Workman usually worked had experienced an exposure to or outbreak of COVID-19. Rather, the facilities had imposed safety, hygiene, and visitation protocols to diminish the risk of COVID-19 exposure. A doctor had not advised Ms. Workman to discontinue performing work for Care Initiatives.

Ms. Workman established a claim for benefits that was effective April 5, 2020. Iowa Workforce Development set her weekly benefit amount at \$230.00. IWD paid Ms. Workman \$1,380.00 in regular benefits for six weeks between April 5, 2020 and May 16, 2020. For that same period, IWD also paid Ms. Workman \$3,600.00 in Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.26(2) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

Iowa Admin. Code r. 871-24.25(17) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(17) The claimant left because of lack of child care.

...

(21) The claimant left because of dissatisfaction with the work environment.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The weight of the evidence in the record establishes an April 2, 2020 voluntarily quit without good cause attributable to the employer. The employer continued to have work for Ms. Workman beyond April 2, 2020, including work at one or more of the locations where Ms. Workman usually performed work and during the 2:00 p.m. to 10:00 p.m. shift that Ms. Workman usually worked. Ms. Workman communicated her decision to voluntarily separate from the employment by declining to accept available shifts. The weight of the evidence fails to establish that the nursing facilities were unsafe workplaces. Ms. Workman presented insufficient evidence to prove that any governmental pronouncement prevented her from reporting to work. The weight of the evidence establishes that Ms. Workman decided not to accept further shifts based on her childcare situation and out of an abundance of concern for the health of her family. While that was Ms. Workman's prerogative, it does not indicate a voluntary quit for good cause attributable to the employer. Ms. Workman is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The employer's account shall not be charged.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because this decision affirms the disqualification for benefits, the \$1,380.00 in regular benefits that Ms. Workman received for six weeks between April 5, 2020 and May 16, 2020 is an overpayment of benefits that Ms. Workman must repay.

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 Ms. Workman is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$3,600.00 in Federal Pandemic Unemployment Compensation that Ms. Workman received for six weeks between April 5, 2020 and May 16, 2020 constitutes an overpayment of benefits that Ms. Workman must repay.

DECISION:

The May 29, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment effective April 2, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant is overpaid \$1,380.00 in regular benefits for six weeks between April 5, 2020 and May 16, 2020. The claimant is overpaid \$3,600.00 in FPUC benefits for six weeks between April 5, 2020 and May 16, 2020. The claimant must repay the overpaid regular and FPUC benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance 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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

July 27, 2020
Decision Dated and Mailed

jet/mh