

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LICIA M MCATEE

Claimant

CARE INITIATIVES

Employer

APPEAL NO. 20A-UI-05327-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19

Claimant: Appellant (1/R)

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:

Licia McAtee filed a timely appeal from the May 28, 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 Ms. McAtee voluntarily quit on March 24, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 7, 2020. Ms. McAtee participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Shiloh Stevens. Exhibits A, F and G were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO and KPYX).

ISSUE:

Whether the claimant's voluntary quit was for 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: Licia McAtee was employed by Care Initiatives as a full-time cook at Wapello Specialty Care from March 16, 2020 until March 26, 2020, when she voluntarily quit the employment. Wapello Specialty Care is a long-term care facility. Ms. McAtee last performed work for the employer on March 24, 2020. Ms. McAtee's work hours were 5:00 a.m. to 2:00 p.m. every other weekend and 2:00 p.m. to 7:00 p.m. on other days of the week. The employer disclosed the work hours prior to Ms. McAtee's acceptance of the employment. Ashley Crumley, Kitchen Manager, was Ms. McAtee's immediate supervisor. On March 26, 2020, Ms. McAtee sent a text message to Ms. Crumley in which she stated that she could not work, that she did not want the job, that she mainly wanted a full-time day shift job, and that she did not think she was cut out for the job. Ms. McAtee made her quit effective immediately. The employer continued to have work for Ms. McAtee when she gave her quit notice.

Ms. McAtee cites the COVID-19 pandemic as a factor in her decision to leave the employment, though she did not mention this to the employer when she gave her quit notice. Ms. McAtee and her husband each suffer from high blood pressure. Ms. McAtee was 59 years old at the time of the employment and had no other health issues besides high blood pressure. Ms. McAtee's husband is 65. Aside from the high blood pressure issue, his only other health issue is obesity. Ms. McAtee did not consult a doctor in connection with making her decision to leave the employment. A doctor had not advised Ms. McAtee or her husband to quarantine. On March 10, 2020, Wapello Specialty Care, went into what the employer characterizes as "lock down." The employer secured the facility. The employer took the temperature of people entering the facility and required people entering the facility to wash their hands. The employer made sure hand sanitizer was available. The employer directed employees with direct contact with residents to wear a mask. Ms. McAtee worked in the kitchen and did not have direct contact with residents. At the time Ms. McAtee quit the employment, there had been no known COVID-19 exposures at Wapello Specialty Care. More than a month after Ms. McAtee quit Wapello Specialty Care experienced its first case of COVID-19.

Ms. McAtee established an original claim for benefits that was effective December 15, 2019, prior to the Care Initiatives employment. Iowa Workforce Development set Ms. McAtee's weekly benefit amount at \$253.00. Ms. McAtee continued to make weekly claims during her employment at Care Initiatives. Ms. McAtee went through the process of establishing an additional claim for benefits that was effective March 29, 2020, though there had been a break in her weekly claims. Care Initiatives is not a base period employer in connection with the claim. Ms. McAtee's quit from Care Initiatives occurred during the benefit week of March 22-28, 2020.

The regular benefits that Ms. McAtee received included \$253.00 for the week ending March 28, 2020 and for the eight weeks that followed. The regular benefits paid to Ms. McAtee for the nine weeks between March 22, 2020 and May 23, 2020 totaled \$2,277.00. IWD also paid Ms. McAtee \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for the eight weeks between March 29, 2020 and May 23, 2020. The FPUC benefits totaled \$4,800.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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). 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. See Iowa Administrative Code rule 871-24.25.

Iowa Admin. Code r. 871-24.25(18) 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:

(18) The claimant left because of a dislike of the shift worked.

...

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

Iowa Admin. Code r. 871-24.26(2) and (4) 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.

...

(4) The claimant left due to intolerable or detrimental working conditions.

Whether working conditions are intolerable or detrimental comes down to whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The evidence fails to establish unsafe or intolerable and/or detrimental working conditions. The employer had implemented safety measures in response to the COVID-19 pandemic and there had been no COVID-19 exposure in the workplace up to the time Ms. McAtee left the employment. The fact that the employer had a COVID-19 issue more than a month after Ms. McAtee's employment is not proof of an unsafe workplace at the time of the employment or at the time Ms. McAtee quit the employment. The evidence does not support Ms. McAtee's assertion that her health issues or her husband's health issues made it necessary for her to leave the employment in light of the risk of being exposed to COVID-19. Ms. McAtee was not ill within the meaning of the law. Ms. McAtee's decision to leave the employment was not based on advice from a licensed and practicing physician. The evidence establishes instead a voluntary quit due to dissatisfaction with the work hours, though the employer had disclosed the work hours prior to Ms. McAtee's acceptance of the employment. It is worth noting that Ms. McAtee had continued to claim unemployment insurance benefits while she was working in the employment. Not only would that be a violation of the law, but it would also indicate low investment in the employment. It is also worth noting that Ms. McAtee's quit came just as Federal Pandemic Unemployment Compensation benefits, the extra \$600.00 per week, were set to kick in effective March 29, 2020.

Because the evidence establishes a voluntary quit without good cause attributable to the employer, Ms. McAtee is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. McAtee must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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 disqualifies Ms. McAtee for unemployment insurance benefits, the \$2,277.00 in regular benefits that Ms. McAtee received for the nine weeks between March 22, 2020 and May 23, 2020 is an overpayment of benefits that Ms. McAtee 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. McAtee is disqualified for regular benefits, based on the separation from the employment, she is also disqualified for the \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) that she received for eight weeks between March 29, 2020 and May 23, 2020. Ms. McAtee must repay the overpaid FPUC benefits.

DECISION:

The May 28, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 26, 2020. 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 \$2,277.00 in regular benefits for nine weeks between March 22, 2020 and May 23, 2020. The claimant is overpaid \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for eight weeks between March 29, 2020 and May 23, 2020. The claimant must repay the overpaid regular and FPUC benefits.

This matter is remanded to the Benefits Bureau for determination of the claimant's eligibility for benefits during the week that ended March 21, 2020, with consideration of the wages the claimant earned for that week but failed to report when she made her weekly claim for that week. The determination should also include an overpayment decision, if appropriate.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

August 6, 2020
Decision Dated and Mailed

jet/sam