

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIARA M GUIDER

Claimant

APPEAL NO. 20A-UI-05045-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

OC: 03/29/20

Claimant: Respondent (2R)

Iowa Code § 96.5-1 – Voluntary Quit

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 22, 2020, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 13, 2020. Claimant participated personally. Employer participated by Jacy Diosdado and Michael Beal.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 11, 2020. Claimant voluntarily quit on January 11, 2020 as claimant was unable to secure the requested hours in her part time job.

Claimant worked as a part time style consultant for employer for over three years. During that time, claimant was not guaranteed hours and the hours would vary based on time of year and need.

Over time employer stated that they became frustrated with a lack of reliability from claimant, but did not specify any specific circumstances or instances that led to this lack of trust in claimant's showing up to work. Employer's only specific example given of claimant's not showing up was actually an error on the part of employer, not claimant.

Claimant stated that she was harassed by employer, but only gave one example – that of being accused of saying things to a coworker that she stated she did not say. She did not have particulars as to when this occurred and employer had no documentation of this conversation.

Claimant has received unemployment benefits in this matter of \$2,030.00.

Claimant has received Federal Pandemic Unemployment Compensation of \$8,400.00.

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.

Iowa Code section 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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she wasn't being given the hours requested and because she felt harassed.

In a voluntary quit matter, claimant must establish that she voluntarily quit her job with good cause attributable to employer. If claimant can prove her quit is with good cause attributable to employer on either of the allegations, she can be successful, but she does bear the burden of proof.

Looking first at the issue of not getting the requested hours, claimant was, throughout her employment, a part time employee. Claimant did not prove an established amount of hours that she would receive. As she was part time without an established schedule or amount of hours, the reduction of hours cannot be seen as a partial unemployment. Although it is admirable that claimant wanted and requested more hours, such request for a part time employee without an established amount of hours to be worked does not account for a good cause reason to quit that is attributable to employer.

With regard to the harassment, claimant's allegations were that she was called into an office because of an alleged no call / no show for work. Employer was incorrect for this allegation and employer apologized to claimant. Claimant also testified generally that her manager was often harassing her, but these allegations without dates or specificity do not amount to claimant satisfying her burden of proof on the harassment allegation.

Claimant has received unemployment benefits in this matter of \$2,030.00. These benefits are overpayments.

Claimant has received Federal Pandemic Unemployment Compensation of \$8,400.00. Claimant is not entitled to these benefits as she is not entitled to regular unemployment and the FPUC benefits are attached onto other unemployment benefits.

The issue of employer participation was not addressed as it was not noticed in the Notice of Appeal. This issue will be remanded to the fact finder.

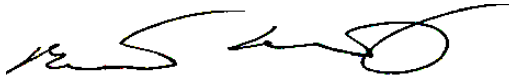
Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, he she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **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>.

DECISION:

The decision of the representative dated May 22, 2020, reference 01, is reversed and remanded to the fact finder on the issue of employer participation in fact finding. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant has received unemployment benefits in this matter of \$2,030.00. These benefits are overpayments.

Claimant has received Federal Pandemic Unemployment Compensation of \$8,400.00. Claimant is not entitled to these benefits as she is not entitled to regular unemployment and the FPUC benefits are attached onto other unemployment benefits.



Blair A. Bennett
Administrative Law Judge

July 21, 2020
Decision Dated and Mailed

bab/scn