

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIA G TRISTAN SAUCEDO**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 21A-UI-14559-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/04/21**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1)j - Voluntary Quitting – Temporary Employment  
Iowa Code §96.5(1) - Voluntary Quit  
Iowa Code §96.5(2)A - Discharge for Misconduct  
Iowa Code § 96.3(7) - Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact Finding  
PL116-136, Sec. 2104 - Eligibility for Federal Pandemic Unemployment Compensation (FPUC)/  
Lost Wages Assistance Program (LWAP)

**STATEMENT OF THE CASE:**

The Employer filed an appeal from the June 23, 2021, (reference 03) unemployment insurance decision that found Claimant eligible for benefits as long as she meets all the other eligibility requirements. The decision is based upon Claimant being employed on a temporary basis and worked until completion of the job on April 24, 2020. Claimant was allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 20, 2021. The claimant, Maria G. Tristan Saucedo, did not participate. The employer, Advance Services Inc., did participate through Melissa Lewien, Risk Manager. Employer's Exhibit 1 and 2 were received into evidence. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment? Was claimant overpaid?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed beginning April 13, 2020. Claimant last day worked an assignment was April 23, 2020, when she was separated from the assignment, but not the employment. Claimant failed to call to report for a new assignment. The employer has a policy in place that requires employees to notify it if an assignment is ended and request a new assignment within three business days of an assignment ending. (Exhibit 1). Claimant was given a copy of this policy in Spanish. (Exhibit 2). Employer considers her date of separation as end of day April 28, 2020 as a voluntary quit for failing to notify end of assignment and request a new assignment. Claimant next contacted employer May 11, 2020, well after the three day window.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,841.00, since filing a claim with an effective date of April 4, 2021, for the weeks ending April 10, 2021; through the week ending June 26, 2021. The employer did participate in the fact-finding interview.

The administrative record reflects that claimant has received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$3,000.00, for the ten-week period ending April 6, 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant's separation was a voluntary quit for failing to timely notify employer of the end of her assignment.

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

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) 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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

Since employer provided evidence that it presented claimant with a written copy of the reporting policy and claimant did not comply with the policy at the end of her assignment, according to Iowa Code § 96.5(1)j, the separation is disqualifying. Employer has a policy and testified there were current assignments if claimant had timely contacted Employer.

Iowa Code § 96.7 provides, in pertinent part:

7. Recover 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.

Ref. 226 - Iowa Admin. Code r. 871- 24.10

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 § 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 § 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 § 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 § 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 § 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 § 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 she 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 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), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

The claimant has been overpaid unemployment insurance benefits in the amount of \$1,841.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). Because claimant received an additional \$3,000.00 in FPUC benefits for the 10-week period ending April 6, 2021, and is not eligible, claimant has been overpaid \$3,000.00 in FPUC unemployment insurance benefits, which must be repaid.

**DECISION:**

The June 23, 2021, (reference 03) unemployment insurance decision is REVERSED. The claimant's separation from employment was a voluntary quit and is not attributable to the employer. Benefits are disallowed. The claimed was overpaid \$1,841.00 in unemployment benefits, which must be repaid. The employer did participate in the fact-finding interview and its account shall not be charged. The claimant was overpaid \$3,000.00 in FPUA benefits, which must be repaid.

**REMAND:**

The issue of whether claimant is eligible for ongoing Pandemic Unemployment Assistance (PUA) benefits is remanded to the Benefits Bureau of Iowa Workforce Development.

  
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Darrin T. Hamilton  
Administrative Law Judge

August 27, 2021  
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Decision Dated and Mailed

dh/kmj