

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KEVIN G ROBB
Claimant

APPEAL NO. 20A-UI-07746-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING INC
Employer

OC: 08/04/19
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Public Law 116-136, Section 2107(e) - Pandemic Emergency Unemployment Compensation
Public Law 116-136, Section 2104(b) - Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 8, 2020, reference 07, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's April 20, 2020 separation from employment did not disqualify him from receiving unemployment insurance benefits or relieve the employer's account liability for benefits. After due notice was issued, a hearing was held on August 13, 2020. Claimant Kevin Robb participated. Colleen McGuinty, Unemployment Benefits Administrator, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX).

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the claimant has been overpaid Pandemic Emergency Unemployment Compensation.
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.
Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kevin Robb was employed by Sedona Staffing, Inc. from September 2019 until April 24, 2020, when he voluntarily quit. During that time, Mr. Robb worked in a part-time, long-term, janitorial assignment that provided ongoing employment and that had no set end date. On April 6, 2020, Mr. Robb notified the employer that he would be quitting the employment effective April 24, 2020 because he and his wife were moving to Cedar Falls. Mr. Robb lived in Delhi at the time of the employment, but had sold his home in Delhi. At the time, Mr. Robb separated from the assignment, the employer and the client business continued to have the same ongoing work available for Mr. Robb.

Mr. Robb established an "additional claim" for benefits that was effective May 3, 2020. The additional claim for benefits was based on an August 4, 2019 original claim. Prior to the May 3, 2020 additional claim for benefits, Mr. Robb had exhausted his eligibility for regular state benefits. In connection with the additional claim for benefits, Iowa Workforce Development paid Mr. Robb Pandemic Emergency Unemployment Compensation (PEUC) benefits for the 12 weeks between May 3, 2020 and July 25, 2020. The PEUC benefits totaled \$5,772.00 and were paid out at a rate of \$481.00 per week. For the same 12 weeks, Iowa Workforce Development paid Mr. Robb Federal Pandemic Unemployment Compensation (FPUC) benefits that totaled \$7,200.00. The FPUC benefits were paid at a rate of \$600.00 per week. Sedona staffing, Inc. is a base period employer for purposes of the claim year that began for Mr. Robb on August 4, 2019 and it ended for Mr. Robb on August 1, 2020.

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). 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 871 IAC 24.25.

Iowa Admin. Code r. 871-24.25(2) 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:

- (2) The claimant moved to a different locality.

The evidence in the record establishes in April 24, 2020 voluntary quit that was without good cause attributable to the employer and which was based on Mr. Robb's decision to relocate to a different community. Because the quit was without good cause attributable to the employer, Mr. Robb is disqualified for regular benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Robb must meet all other eligibility requirements. The employer's account has not been charged for benefits and will not be charged for benefits.

Because this decision disqualifies Mr. Robb for regular benefits, he is also disqualified for the Pandemic Emergency Unemployment Compensation that he received for the period of May 3, 2020 through July 25, 2020.

Public Law 116-136, Section 2107(e)(2) provides, in pertinent part, as follows:

(2) Repayment

In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency...

Public Law 116-136, Section 2107(e)(3)(a) provides as follows:

(3) Recovery by State agency

(A) In general

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

The \$5,772.00 in PEUC benefits that Mr. Robb received for 12 weeks between May 3, 2020 and July 25, 2020 are an overpayment of benefits that Mr. Robb 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 this decision disqualifies Mr. Robb for regular unemployment insurance (UI) benefits, he is also disqualified for the \$7,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that he received for the 12 weeks between May 3, 2020 and July 25, 2020. Mr. Robb must repay the overpaid FPUC benefits.

DECISION:

The July 8, 2020, reference 07, decision is reversed. The claimant voluntarily quit the employment on April 24, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant is overpaid \$5,772.00 in PEUC benefits for 12 weeks between May 3, 2020 and July 25, 2020. The claimant was overpaid \$7,200.00 in FPUC benefits for 12 weeks between May 3, 2020 and July 25, 2020. The claimant must repay the overpaid PEUC and FPUC benefits.

Note to Claimant: This decision determines you are not eligible for 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 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

August 20, 2020
Decision Dated and Mailed

jet/scn