

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN W LOURENS
Claimant

ALL IN A DAY LLC
Employer

APPEAL 21A-UI-10751-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/07/21
Claimant: Respondent (2R)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 7, 2021, All In A Day, LLC (employer) filed an appeal from the March 30, 2021, reference 01, unemployment insurance decision that allowed benefits based upon the determination Kevin W. Lourens (claimant) did not voluntarily quit but was discharged and the employer failed to provide evidence showing it was for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on July 2, 2021. The claimant participated personally. The employer participated through Nancy Martens, Branch Manager, and Toni Houlguin, Human Resources Specialist. The employer's Exhibits 1 and 2 were admitted into the record without objection.

ISSUES:

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

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

Has the claimant been overpaid Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a temporary full-time position, as a General Laborer, with the employer's client Norwesco beginning on November 5, 2020, and his last day worked was December 11. The employer has a policy stating after the end of an assignment, an employee must notify them within three days and request another assignment or they will be deemed to have voluntarily quit. The claimant signed and received a copy of the policy upon hire.

On December 7 and 10, the claimant notified the employer that he would not be to work due to illness. On December 14, the claimant spoke to Nancy Martens, Branch Manager, and stated he did not know when he would be able to return to work due to his continued illness. The

claimant's assignment ended. The claimant was not able to return to work until the end of December and he did not contact the employer to request additional work.

The administrative record reflects that the claimant has received \$3,451.00 in regular unemployment benefits and \$2,100.00 in Federal Pandemic Unemployment Compensation (FPUC), since filing a claim with an effective date of March 7, 2021, for the seven weeks between March 7 and April 24. The employer responded to the SIDES notice of claim; however, the fact-finder did not call them for the interview.

On May 25, 2021, the agency issued the reference 03 unemployment insurance decision that found the claimant was disqualified from receiving benefits based on his separation from another employer on October 22, 2020. The claimant did not appeal that decision and it has become final agency action. Whether the claimant has been overpaid benefits as a result of that separation has not been adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

- 1. Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?*

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides, in relevant part:

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.

...

- 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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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(15) 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.

(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule *if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.* [Emphasis added.]

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant “who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment.” (Emphasis added.)

In this case, the employer had notice of the end of the claimant’s assignment and that he was not available for work immediately following the end of the assignment. The claimant did not file for benefits while he was ill and had justifiable cause for not requesting a new assignment. The claimant’s health improved by the end of December; however, he did not request reassignment with the employer. Therefore, he is considered to have quit the employment without good cause attributable to the employer. Benefits are denied.

II. Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer’s account?

For the reasons that follow the administrative law judge finds, the claimant was overpaid regular unemployment insurance benefits, which he is not required to repay due to the separation from this employer, because the employer did not participate in the fact-finding interview. However, the employer did not participate through no fault of its own and its account shall not be charged.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

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(1) 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 unrebutted 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.

Because the claimant's separation was disqualifying, benefits were paid to which he 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. Iowa Code § 96.3(7). However, an overpayment, which results from a reversal of an initial allowance of benefits based on a separation, will not be recovered 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. Iowa Admin. Code r. 871-24.10(1).

The benefits were not received due to any fraud or willful misrepresentation by claimant. Additionally, the employer did not participate in the fact-finding interview. Thus, the claimant is

not obligated to repay to the agency the benefits based on the disqualification from this separation.

Whether the claimant is obligated to repay the benefits received based on the disqualification decision issued May 25, 2021, reference 03, is remanded to the Benefits Bureau for review and processing.

The law also states that an employer is to be charged if “the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits. . .” Iowa Code § 96.3(7)(b)(1)(a). Here, the employer did not participate in the fact finding interview through no fault of its own and cannot be charged. If the claimant is not required to repay the benefits based on his other separation, the payments shall be absorbed by the fund.

III. Has the claimant been overpaid FPUC?

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid FPUC, which must be repaid unless he is eligible to have the overpayment waived.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(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 the claimant is disqualified from receiving UI, he is also disqualified from receiving FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview.

The claimant has been overpaid FPUC in the gross amount of \$2,100.00 for the seven-week period between March 7 and April 24, 2021. These benefits must be repaid unless the claimant is eligible for a waiver of the overpayment. Instructions for requesting a waiver will be found at the end of the decision.

DECISION:

The March 30, 2021, reference 01, unemployment insurance decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until he works and earns insured wages equal to ten times his weekly benefit amount, provided he is otherwise eligible

The claimant has been overpaid \$3,451.00 in regular unemployment insurance benefits, and he is not obligated to repay the agency those benefits based on this disqualifying separation. The employer did not participate in the fact-finding interview through no fault of its own and its account shall not be charged.

The claimant has been overpaid \$2,100.00 in FPUC, and he will be required to repay the benefits unless he is found eligible for a waiver.

REMAND:

Whether the claimant is obligated to repay the benefits received from March 7 through April 23, 2021, based on the disqualification decision issued May 25, 2021, reference 03, is remanded to the Benefits Bureau for review and processing.



Stephanie R. Callahan
Administrative Law Judge

July 14, 2021
Decision Dated and Mailed

src/kmj

Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.