

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN M KRIEGER
Claimant

BURLINGTON CARE CENTER INC
Employer

APPEAL 20A-UI-07598-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 23, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2020. The claimant participated. The employer participated through Vicki Irvin.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an LPN and was separated from employment on March 17, 2020, when he quit the employment. Continuing work was available.

On March 10, 2020, employer announced that all residents and staff would need to be relocated temporarily for approximately four to six months. Staff and residents would be relocated to Mount Pleasant, Iowa which is approximately 30 minutes from Burlington, Iowa. Employer explained to all employees that they would keep their jobs at the exact same hours and wages and that it would offer a free shuttle service from Burlington, Iowa to Mount Pleasant, Iowa to mitigate transportation issues and costs for employees.

Claimant lives in Biggsville, Illinois, which is approximately a twenty-five minute drive to the employer's Burlington facility. Claimant is in full-time schooling to be an R.N, has an elderly father for whom he cares for, and children involved in school activities. Claimant visited the premises in Mount Pleasant on March 11, 2020 and timed the commute. The claimant determined that the additional thirty minutes of driving each way, added to his existing twenty-five minute commute to work, would impact his ability to complete his schooling and tend to family matters. Rather than accept the transfer, the claimant voluntarily quit the employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$10,767.00, since filing a claim with an effective date of March 15, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant seventeen payments of \$600 each (total: \$10,200) in FPUC.

The administrative record also establishes that the employer did not participate in the June 17, 2020 fact-finding interview or make a witness with direct knowledge available for rebuttal. Ms. Irvin did not attend because she was on another call with IWD at the time of the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In this case, the claimant's position at Burlington Care Center Inc. was transferred to Mount Pleasant, Iowa, approximately thirty minutes away. The change was temporary but for a period of four to six months. While the administrative law judge recognizes the employer attempted to minimize the impact on employees, for the claimant to nearly double his commute from twenty-five minutes to fifty-five minutes, for an extended period with no end date, would constitute a substantial change in the contract of hire. The claimant has established he quit for good cause reasons attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

The issue of whether the claimant is able to and available for work effective March 15, 2020 due to full-time school is remanded to the Benefits Bureau for an initial investigation and decision.

Because the claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

The final issue to address is whether the claimant is eligible for Federal Pandemic Unemployment Compensation (FPUC).

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 the claimant is allowed regular unemployment insurance benefits, he is also eligible for FPUC, provided he is otherwise eligible. The employer is not charged for these federal benefits.

DECISION:

The June 23, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. He is not overpaid benefits. The employer's account cannot be relieved of charges associated with the claim for regular unemployment insurance benefits. The claimant is also eligible for FPUC, provided he is otherwise eligible.

REMAND: The issue of whether the claimant is able to and available for work effective March 15, 2020 due to full-time school is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

August 20, 2020
Decision Dated and Mailed

jlb/mh