

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

REILLY J HOOTMAN
Claimant

BWC INDUSTRIAL SERVICES LC
Employer

APPEAL NO. 22A-UI-19767-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/22
Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

On December 15, 2022, the employer filed a timely appeal from the December 8, 2022 (reference 01) 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 the deputy's conclusion the claimant voluntarily quit to care for an ill or injured family member, offered to return to work after the family member recovered, but work was not available. After due notice was issued, a hearing was held on January 11, 2023. Reilly Hootman (claimant) participated. Kurt Klostermann represented the employer and presented additional testimony through Jeremy Zable. Exhibits 1, 2, 3 and 6, consisting of the appeal letter, the Timecard List, the Employment Termination Form, and the Notice of Unemployment Insurance Fact-finding Interview respectively, were received into evidence. The administrative law judge took official notice of the Iowa Workforce Development record of benefits paid to the claimant (DBRO). The administrative law judge took official notice of the fact-finding record for the purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.
Whether the claimant was overpaid benefits.
Whether the claimant must repay overpaid benefits.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Reilly Hootman (claimant) was employed by BWC Industrial Services, L.C., as a full-time construction laborer from 2018 until September 27, 2022, when he voluntarily quit due to a lack of adequate childcare. The claimant last performed work for the employer on September 26, 2022. Toward the end of the employment, the claimant's work day would start at 5:30 a.m. and conclude at 5:00 p.m. At times, the claimant might need to report for work as early as 4:30 a.m., but never later than 6:30 a.m. The claimant would meet the other members of the construction

crew at the designated central site and then travel with the crew to the jobsite. The claimant's work day was generally scheduled to end at 3:30 p.m. The claimant worked Monday through Friday. The claimant also worked weekends as needed. Jeremy Zable, Industrial Services Supervisor, was the claimant's supervisor. The claimant has at all relevant times resided in Cedar Rapids.

On or about September 20, 2022, the claimant notified the employer that he had experienced a life-changing event and that he did not know what his subsequent availability for work would be. Prior to that time, the claimant had shared physical custody of his four-year-old child with the child's mother. The claimant and the child's mother do not share a residence. In mid-September 2022, Iowa child welfare authorities removed the child from the mother's care and placed the child in the claimant's custody full-time. The employer allowed the claimant to take time off from work to arrange adequate care for his child. The employer and the claimant each hoped the claimant would continue in the employment. The claimant's biggest childcare challenge centered on securing childcare in the morning before the child's daycare/preschool began receiving students. While the claimant's work day started at 6:30 a.m. or earlier, the child's daycare/preschool would not accept the child into its care and supervision until 7:15 a.m. The claimant also needed to transport his child to and from a once-weekly 45-minute afternoon therapy session in Cedar Rapids. The employer's time-off policy and practice would likely have made the weekly appointments workable in the short-term. The claimant addressed the morning childcare issue with the employer, but did not mention the issue of the once-weekly therapy appointments. The child did not have medical or healthcare needs other than the weekly therapy appointment and the need for an infrequent medical checkup. The claimant advises he did not have an ill or injured family member, despite the December 8, 2022 (reference 01) decision referring to such.

In an attempt to brainstorm a solution to the morning childcare issue, the claimant and employer discussed having the claimant move to another part of the employer's business in which employees reported for work at 7:00 a.m. for an eight-hour day. However, that move would still not resolve the gap in childcare between a 7:00 a.m. work start time and 7:15 a.m. earliest time when the claimant could drop his child at daycare/preschool.

On September 26, 2022, the claimant returned to work after having a number of days off to work on the childcare issue. On September 26, the claimant's sister happened to be off work from her full-time employment and was available to care for the claimant's child. The claimant's sister was not otherwise available to care for the claimant's child during the claimant's work hours.

On September 27, 2022, the claimant notified the employer he would not be returning to the employment in light of the lack of adequate childcare. At the time the claimant notified the employer he would not be returning to the employment, the employer continued to have work available for the claimant.

The claimant established an original claim for benefits that was effective November 13, 2022. Iowa Workforce Development set the weekly benefit amount at \$551.00. The claimant received \$2,204.00 in benefits for the four weeks between December 11, 2022 and January 7, 2023. BWC Industrial Services is the sole base period employer.

On December 7, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. Kurt Klostermann, Chief Operations Officer, represented the employer at the fact-finding interview.

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.

When the claimant left employment because of a lack of child care, the quit is presumed to be without good cause attributable to the employer. See Iowa Admin. Code rule 871-24.25(17).

The evidence in the record established a September 27, 2022 voluntary quit without good cause attributable to the employer. The claimant quit due to a lack of adequate child care. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$2,204.00 in benefits for four week between December 11, 2022 and January 7, 2023, but this decision disqualifies the claimant for those benefits. Accordingly, the benefits the claimant received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The December 8, 2022 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment on September 27, 2022 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant is overpaid \$2,204.00 in benefits for four week between December 11, 2022 and January 7, 2023. The claimant is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.



James E. Timberland
Administrative Law Judge

January 20, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.