

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAEN T POLASKY
Claimant

WEST CENTRAL VALLEY SCHOOLS
Employer

APPEAL NO. 21A-UI-00137-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/20
Claimant: Respondent (1)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 13, 2020, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 2, 2021. Claimant participated personally. Employer participated by attorney Drew Bracken and witnesses Rusty Shockley and Symantha Crawford. Employer's exhibits 1-2 and Claimant's exhibits A & D were admitted into evidence.

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

Whether claimant is eligible for Federal Pandemic Unemployment Compensation

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 31, 2020. Claimant voluntarily quit through a letter given to employer on February 11, 2020 but made effective as of the last day of school on May 31, 2020.

Claimant was hired by employer to serve as a high school full time teacher and head high school football coach for employer. Claimant was hired as the school had struggled with football in recent years and the previous coach moved to another program. Claimant stated as soon as he was hired an assistant coach who had wanted to be the head coach began to work

to undermine him. This continued throughout the summer. Claimant went to the previous supervisor to complain about these matters, but that supervisor did not act to address claimant's concerns.

Claimant stated that the season only brought about heightened tensions between claimant and the assistant coach. After an incident of sideline confrontation, claimant sought to move the other coach to the press box, but the supervisor told claimant he had to be on the sidelines to keep his backers calm. This resulted in another incident on the sidelines. The assistant coach was given a 3 day suspension and told he could not act in that manner again. The next game, after another substantial loss, the assistant coach was screaming at claimant in the middle of the field and was seemingly interested in coming to blows. In order to avoid a physical confrontation in front of fans or in the locker room in front of the team, the claimant did not address the team after the game.

As claimant had left the team after the game, the superintendent asked claimant not to coach for the rest of the season. Claimant stated that the superintendent believed this would ease the dissension in the community. Claimant asked for a community meeting to be set up where claimant could address all of the matters in an attempt to reestablish himself and to unite the community. Employer did not arrange this meeting. Employer decided it would be best if claimant would not return as coach, but claimant was welcome to continue teaching.

Claimant stated that the dissension within the community led to disrespect in his classroom from students that were supportive of the assistant coach. He further stated that his young daughter was harassed at her elementary school by bullies who wished she and her family would leave or die. Claimant's wife and daughter moved out of the community.

On multiple occasions beginning in early September, claimant put in letters of resignation. His last, most recent letter was sent in February of 2020 and was accepted by employer.

Claimant has received unemployment benefits in this matter of \$4,442.00.

Employer did substantially participate in fact finding in this matter by completely and substantially filling out a fact finding packet.

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.

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

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 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.

(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 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 section 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 section 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 section 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 section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because employer would not support claimant as the head coach and undermined him in both his coaching and in the classroom by allowing dissension from an assistant coach.

At the time of hire, claimant indicated that it was his desire to be a head football coach, and his acceptance of a teaching position was to further his coaching dreams. Claimant went to a previous superintendent with his issues concerning a disgruntled assistant coach over the summer and kept in contact with the superintendent through emails. The superintendent not only did not address the issues, but acted to aid in the undermining of the coach by demanding the assistant coach remain on the sideline, even though it was immediately apparent the two parties could not be together.

The acrimony towards the claimant showed through harassment of his child and through claimant’s classroom. Claimant’s attempts to address the situation were repeatedly rebuffed by the employer.

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. IA Dept. 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 test of good faith.” *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). “Common sense and prudence must be exercised in evaluating all of the

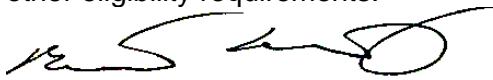
circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* Although employer's counsel argues that these are normal rough patches experienced by all new coaches or new parties to a situation, the lack of institutional support for claimant is unusual. Claimant's quit was for good cause attributable to employer.

The overpayment issue is moot.

The issue of employer participation is moot.

DECISION:

The decision of the representative dated November 13, 2020, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

March 8, 2021
Decision Dated and Mailed

bab/lj