

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRIS KALINA
Claimant

**GOVERNMENT EMPLOYEES INSURANCE
CO**
Employer

APPEAL 20A-UI-08323-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Respondent (2)

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:

On July 24, 2020, the employer filed an appeal from the July 17, 2020, (reference 03) unemployment insurance decision that awarded benefits based on no proof of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2020. Claimant did not participate. Claimant registered for the hearing after the hearing was over and was not called. Employer participated through Amanda Sanford, HR Supervisor, Amber Snow, Service Manager and Kellie Langden, Claimant Specialist for Equifax. Jacqueline represented the employer.

Administrative notice was taken of IWD mainframe computer screen DBRO and KPYX concerning the benefits that have been paid in this claim as well as the notes for the fact finding interview. Claimant has received \$1,364.00 in state unemployment benefits and \$2,040.00 in Federal Pandemic Unemployment Compensation (FPUC).

ISSUES:

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

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:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 28, 2020. Claimant last worked as a full-time Service Representative. Claimant was separated from employment on May 14, 2020, when claimant submitted her resignation due to personal health reasons.

The employer was not provided a notice of a fact finding interview and was provided an opportunity to actively participate in the fact finding process.

REASONING AND CONCLUSIONS OF LAW:

For the following reason I find that claimant voluntarily quit his employment without good cause and is not eligible for unemployment benefits.

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 Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant submitted her resignation from work due to personal health conditions. There is no evidence that claimant was advised by a physician to leave work and that she is now able to perform all of her job duties. The claimant is deemed to have voluntarily quit without good cause.

The next issue is whether claimant must repay any overpayment.

Claimant has been paid \$1,364.00 in state unemployment benefits. Claimant is not eligible for state unemployment benefits. I find claimant has been overpaid \$1,364.00 in state unemployment benefits. However, claimant is not required to pay the state benefits back.

Claimant is not eligible for FPUC, as she is not eligible for state unemployment benefits. I find claimant has been overpaid \$2,040.00 in FPUC.

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.

I find that the employer did not actively participate in the fact finding process. I also find the reason is that the Iowa Workforce Development did not provide the employer a meaningful opportunity to participate. As such, the claimant is not required to repay the overpayment of state unemployment benefits and the employer's account shall not be charged for the overpayment. Iowa Workforce development shall be responsible for the overpayment of state unemployment benefits.

The next issues to be determined are whether claimant was eligible for FPUC and whether claimant has been overpaid FPUC. For the reasons that follow, the administrative law judge concludes claimant was not eligible for FPUC and was overpaid FPUC, which must be repaid.

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 claimant is disqualified from receiving UI, she is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the net amount of \$2,040.00. Claimant must repay these benefits.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 7, 2020, (reference 03) unemployment insurance decision is reversed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid state unemployment benefits, however the claimant is not required to pay these back and the employer's account shall not be charged and must repay these benefits. Claimant was awarded \$2,040.00 in FPUC benefits and must replay these benefits.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though claimant is not eligible for regular unemployment insurance benefits under state law, claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic

Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-informatio>
<https://www.iowaworkforcedevelopment.gov/Pua-application>



James F. Elliott
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

je/sam