

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELVIN PLEDGE

Claimant

APPEAL 20A-UI-12884-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

OC: 06/14/20

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

Iowa Code § 96.5(3)a – Work Refusal

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On October 19, 2020, DES Staffing Services, Inc. (employer) filed an appeal from the October 13, 2020, reference 02, unemployment insurance decision that allowed benefits based upon the determination Melvin Pledge (claimant) was laid off due to a reduction in staff. The parties were properly notified about the hearing held by telephone on December 15, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Julie Redmond, Operations Manager, and it was represented by Jamie Scott, Human Resources Manager. The employer's Exhibits 1 and 2 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

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

Did the claimant refuse a suitable offer of work?

Is the claimant able to and available for work?

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 for the employer's client Goodwill of the Heartland beginning on January 28, 2020. The employer's policy states an employee has three days after the end of an assignment to request another job assignment. The claimant signed and received a copy of that policy.

On March 23, the employer's client laid off employees, including the claimant. The employer notified the claimant of the end of the assignment. He did not request another job assignment after March 23 because he was watching his grandchildren.

The administrative record reflects that the claimant has received \$444.00 in regular unemployment insurance benefits and \$1,800.00 in FPUC during the claim year effective June 16, 2019, which he reactivated on March 29, 2020, for the three weeks ending June 13, 2020. He also received \$2,738.00 in regular unemployment benefits and \$3,600.00 in FPUC since filing his current claim for benefits effective June 14, 2020. Julie Redmond, Operations Manager, and Jamie Scott, Human Resources Manager, participated in the fact-finding interview on behalf of the employer.

The claimant has also received Pandemic Emergency Unemployment Compensation (PEUC) since filing his claim for benefits effective June 14, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 effective March 29, 2020. The claimant has been overpaid regular unemployment insurance benefits, which must be repaid, because the employer participated in the fact-finding interview. The claimant has also been overpaid FPUC, which must be repaid.

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

Iowa Code section 96.5(1)j 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. But the individual shall not be disqualified if the department finds that:

...

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.

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 supplied.) In this case, the employer had notice of the claimant's availability because it notified him of the end of the assignment but he did not request another assignment. Therefore, he is considered to have quit the employment without good cause attributable to the employer. Benefits are denied.

As benefits are denied, the issues of work refusal and ability to and availability for work are moot.

- 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?

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 un rebutted 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. However, if the overpayment is based on a reversal of an allowance of benefits due to a separation, the overpayment 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. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview.

In this case, the claimant has received \$3,182.00 in regular unemployment insurance benefits effective March 29, 2020, but he was not eligible for those benefits. The employer participated in the fact-finding interview through first-hand witnesses. Since the employer participated in the fact-finding interview, the claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

III. Has the claimant been overpaid FPUC?

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...

Since the claimant is not eligible for regular unemployment benefits, he was overpaid \$5,400.00 in FPUC from May 24 through July 25. The claimant will be required to repay the benefits received unless this decision is overturned or he is found eligible for Pandemic Unemployment Assistance (PUA).

Whether the claimant has been overpaid PEUC, consistent with this decision, is remanded to the Benefits Bureau for review.

DECISION:

The October 13, 2020, reference 02, unemployment insurance decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until he works and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid \$3,182.00 in regular unemployment insurance benefits, and he is obligated to repay the agency those benefits because the employer participated in the fact-finding interview and its account shall not be charged. The claimant has been overpaid \$5,400.00 in FPUC, which must be repaid.

REMAND:

Whether the claimant has been overpaid PEUC, consistent with this decision, is remanded to the Benefits Bureau for review.



Stephanie R. Callahan
Administrative Law Judge

December 30, 2020
Decision Dated and Mailed

src/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.