

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DON C BROWN
Claimant

MENARD INC
Employer

APPEAL NO. 21A-UI-09804-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (2R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Overpayment
Public Law 116-136, Section 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2021, reference 02, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on March 22, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on June 22, 2021. The claimant, Don Brown, participated. Krystal Boege represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX and the Fact-Finding Worksheet for Able & Available.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the claimant was overpaid regular benefits.
Whether the claimant must repay overpaid regular benefits
Whether the employer's account may be charged for overpaid regular benefits.
Whether the claimant was overpaid 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 by Menard, Inc. as a part-time cashier at the employer's Clive store. The claimant began the employment in 2014 and last performed work for the employer on March 20, 2020. The claimant averaged 30.95 hours a week during the final year in the employment. Effective March 22, 2020, the claimant commenced an approved leave of absence. The claimant went on the leave of absence because he was concerned about potentially being exposed to the COVID-19 virus and possibly sharing the virus with his wife or adult son. The claimant's adult son resides with the claimant. The claimant's adult son is an able-bodied person, but is immune-compromised. The claimant and his spouse are 65 years old or older. The employer approved the claimant's initial request for a leave of absence to April 22, 2020 and a subsequent extension of the leave of absence to June 26, 2020. The claimant elected not to return to the employment at the end of the leave of absence and signed

a voluntary resignation form on June 30, 2020 to document his voluntary separation from the employment. The claimant did not consult with a doctor when making his decision not to return to the employment. No one in the claimant's family was ill at the time the claimant decided not to return to the employment and the separation was not based on a need to care for an ill family member. The employer continued to have the same work available to the claimant through the period the claimant had been off work and continued to have work available to the claimant at the time the claimant voluntarily separated from the employment.

The claimant established an original claim for unemployment insurance benefits that was effective March 22, 2020. This employer is the sole base period employer. The claimant received \$12,506.00 in regular benefits for the period of March 22, 2020 through September 19, 2020. This included \$6,734.00 in regular benefits for the 14 weeks between March 22, 2020 and June 27, 2020 and \$5,772.00 in regular benefits for the 12 weeks between June 28, 2020 and September 19, 2020. The claimant also received \$10,971.00 in Pandemic Emergency Unemployment Compensation (PEUC) for the period of September 27, 2020 through March 20, 2021. The claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits. This included \$7,800.00 in FPUC benefits for the 13 weeks between March 29, 2020 and June 27, 2020, \$2,400.00 in FPUC benefits for the four weeks between June 28, 2020 and July 25, 2020, and \$3,600.00 in FPUC benefits for the 12 weeks between December 27, 2020 and March 20, 2021. The claimant also received \$1,800.00 in Lost Wages Assistance Payments (LWAP) for six weeks between July 26, 2020 and September 5, 2020.

On March 5, 2020, an Iowa Workforce Development representative held a scheduled fact-finding interview that was supposed to address whether the claimant was able to work and available for work. The employer and the claimant received notice of the scheduled fact-finding interview. The claimant participated in the fact-finding interview, but the deputy's notes do not include a claimant statement or documentation of the claimant's participation. There is nothing to indicate the claimant made any misrepresentations at the time of the fact-finding interview. The deputy's notes include a five-word employer statement attributed to a Jordan Miller as the employer representative: "5/24 to 6/2 exposed to covid quarantined." The five-word statement attributable to Jordan Miller does not appear to have anything to do with the claimant's employment and reflects that person lacked personal knowledge regarding the claimant's employment. The employer's representative at the appeal hearing does not know who Jordan Miller is. Following the fact-finding interview, the deputy entered a decision regarding a purported March 20, 2020 discharge, but no decision regarding the leave of absence that commenced on March 20, 2020.

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.

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record established the claimant voluntarily quit the employment for personal reasons and without good cause attributable to the employer by failing to return to the employment at the end of the leave of absence that was to end by agreement on June 26, 2020. Effective June 28, 2020, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefits amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because this appeal concerns the separation from the employment, and does not concern the leave of absence or whether the claimant was able to work and available for work during the leave of absence, the administrative law judge concludes the claimant was overpaid \$5,772.00 in regular benefits for the 12 weeks between June 28, 2020 and September 19, 2020. This was the period following the effective separation date.

Iowa Administrative Code rule 871-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(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.

The evidence establishes that the employer had notice of the fact-finding interview, but did not satisfy the participation requirement. The employer participant lacked personal knowledge of the claimant's employment. The employer representative provided minimal and erroneous information regarding the claimant's employment. There is no indication the claimant misrepresented material facts. Accordingly, the claimant is not required to repay the \$5,772.00 in regular benefits that he received for 12 weeks between June 28, 2020 and September 19, 2020. The employer's account may be charged for those benefits. The employer's account shall not be charged for benefits for the period beginning September 20, 2020.

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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Because the claimant was disqualified for regular benefits for the period beginning June 28, 2020, the \$2,400.00 in FPUC benefits he received for the four weeks between June 28, 2020 and July 25, 2020 and \$3,600.00 in FPUC benefits he received for the 12 weeks between December 27, 2020 and March 20, 2021 are benefits overpayments. The claimant must repay the overpaid FPUC benefits unless he applies for and is approved for waiver of repayment. See below.

This matter will be remanded to the Benefits Bureau for entry of a decision regarding the claimant's availability for work for the period of March 22, 2020 through June 27, 2020, the period that corresponds to the approved leave of absence. The remand should also address whether the claimant was overpaid regular and FPUC benefits for that period and whether the employer's account may be charged for benefits for that period.

This matter will be also remanded to the Benefits Bureau for entry of overpayment decisions regarding the \$1,800.00 in LWAP benefits the claimant received for the period of July 26, 2020 through September 5, 2020 and the \$10,971.00 in Pandemic Emergency Unemployment Compensation (PEUC) the claimant received for the period of September 27, 2020 through March 20, 2021.

DECISION:

The March 23, 2021, reference 02, decision is reversed. The claimant voluntarily quit without good cause attributable to the employer by failing to return to work at end of the approved leave of absence, which ended on June 26, 2020. Effective June 28, 2020, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$5,772.00 in regular benefits for the 12 weeks between June 28, 2020 and September 19, 2020. The claimant is not required to repay those overpaid regular benefits and those overpaid regular benefits may be assessed to the employer's account.

The claimant was overpaid \$2,400.00 in FPUC benefits for the four weeks between June 28, 2020 and July 25, 2020 and \$3,600.00 in FPUC benefits for 12 weeks between December 27, 2020 and March 20, 2021. The claimant must repay the overpaid FPUC benefits unless he applies for and is approved for waiver of repayment. See below.

This matter is **remanded** to the Benefits Bureau for entry of a decision regarding the claimant's availability for work for the period of March 22, 2020 through June 27, 2020, the period that corresponds to the approved leave of absence. The remand should also address whether the claimant was overpaid regular and FPUC benefits for that period and whether the employer's account may be charged for benefits for that period.

This matter is also **remanded** to the Benefits Bureau for entry of overpayment decisions regarding the \$1,800.00 in LWAP benefits the claimant received for the six weeks between July 26, 2020 and September 5, 2020 and the \$10,971.00 in Pandemic Emergency Unemployment Compensation (PEUC) the claimant received for the period of September 27, 2020 through March 20, 2021.



James E. Timberland
Administrative Law Judge

July 2, 2021
Decision Dated and Mailed

jet/lj

Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.