

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBBIE A BAKER
Claimant

APPEAL 21A-UI-03822-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS INC
Employer

OC: 11/08/20
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Crossroads Inc., filed an appeal from the January 13, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 31, 2021. The claimant, Debbie A. Baker, participated personally. The employer participated through Susan Chmelovsky, hearing representative. Cheryl Plank, Julie Hohenadel, and Maria Geurink testified. Steve Morenz attended as an observer.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as the director of finance and was separated from employment on November 12, 2020, when she quit without notice. Continuing work was available.

Prior to quitting, the employer had announced reorganization. Ms. Plank became CEO of Visions 20/20, which was acquiring/going to manage this employer, Crossroads Inc. The claimant was informed that as part of the reorganization, her position would be eliminated and a Chief Financial Officer (CFO) would be appointed. No end date had been established at the

time of separation. At the time of separation, Julie Hohenadel, and Maria Geurink, human resources officers, reported to claimant.

Claimant had applied for the CFO position. On October 21, 2020, claimant voluntarily withdrew her application for consideration. Claimant withdrew because she did not agree with the direction of the company. Employer acknowledged it was an awkward time, as claimant's job duties were winding down and there were structural changes occurring. The claimant experienced exclusion of meetings for which she had previously attended, which upset her. Claimant felt it compromised her ability to do her job. Employer felt it was unnecessary to have claimant attend in light of changes.

On October 30, 2020, claimant emailed Ms. Plank about concerns regarding a possible fraud inquiry. See Employer Exhibit 1. Claimant and Ms. Plank disagreed about how to handle the issue, in terms of it being of an investigatory nature versus discussion. Claimant was also warned to be careful about using the term "fraud" loosely, given the possible implications it could have in their business/industry.

On November 12, 2020, claimant quit upon learning of a new payroll change and meeting that she had been excluded from about the changes. Claimant was responsible for payroll and upset. Claimant spoke to Ms. Hohenadel, and Ms. Geurink that day about being upset. Ms. Geurink stated based upon their work friendship and relationship, she did not treat the discussions as claimant raising concerns with human resources to fix, but as work friends talking and upset. Claimant informed both she was quitting after stating she had a doctor's appointment for her mother. Claimant emailed Ms. Plank that she was quitting immediately, as Ms. Plank was off site. Ms. Plank responded by getting into her car and driving right to the work site but claimant had already left.

At the hearing, claimant asserted she quit because she was "unable to fulfill her job duties" and opined that her resignation was consistent with Iowa Admin. Code r. 871-24.26(4), which allows benefits to a claimant who quits due to intolerable or detrimental working conditions.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$4,437.00, since filing a claim with an effective date of November 8, 2020.

The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Administrative records do not reflect employer was provided notice of a scheduled interview, called, or provided a written fact-finding interview worksheet to complete.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

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(21) and Iowa Admin. Code r. 871-24.25(29) provide:

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:

(21) The claimant left because of dissatisfaction with the work environment.

...

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). 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. Iowa Dep't 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 element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

Based on the evidence presented, the administrative law judge concludes that a reasonable person would not have quit, without notice, on November 12, 2020. The administrative law judge is sympathetic to the claimant and recognizes the changes occurring at the workplace impacted her both professionally and personally. Cognizant of the awkwardness claimant reasonably felt as she knew her job was coming to an end and she was no longer being included in conversations for which she had previously participated, the administrative law judge is not persuaded the claimant was unable to do her job, based upon the work conditions at the end of her job duties. The evidence presented does not support that claimant was being asked to perform unlawful or unethical actions, nor had the conditions escalated at the workplace to constitute a detrimental or hostile workplace. Rather, the tipping point for claimant was learning she had again been excluded from another meeting she believe she should have been included on. Without evaluating whether claimant's assertion was valid or not, the administrative law judge is not persuaded that even if the claimant should have been included in the meeting, that a reasonable person would have quit that day, without notice. While the claimant may have had personally compelling reasons to quit the employment, the evidence does not support she quit for good cause attributable to the employer, according to Iowa law. Benefits are denied.

The next issue to address is whether claimant must repay benefits she received to date.

Iowa Code § 96.3(7)a-b 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 § 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 § 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.

(1) 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 states pursuant to § 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The claimant has been overpaid benefits in the amount of \$4437.00. 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, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation 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 it did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

The administrative law judge further concludes the employer did not satisfactorily participate in the fact-finding interview pursuant to Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. The law states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits." Iowa Code § 96.3(7)(b)(1)(a).

Here, the employer did not receive the notice of fact-finding interview, and did not have notice to be available and participate in the fact-finding interview. Benefits were not allowed because the employer failed to respond timely or adequately to IWD's request for information relating to the payment of benefits. Instead, benefits were allowed because the employer did not receive proper notice to participate in the fact-finding interview. Employer thus cannot be charged. Since

neither party is to be charged, any potential charges for this claim should be absorbed by the fund. Claimant **does not** have to repay the regular unemployment insurance benefits.

DECISION:

The January 13, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid \$4,437.00 in regular unemployment insurance benefits but does not have to repay the benefits because the employer did not satisfactorily participate in the fact-finding interview. The employer's account is relieved of charges.

REMAND: The issue of whether claimant has been overpaid federal FPUC benefits is remanded to the Benefits Bureau.

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 apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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April 5, 2021
Decision Dated and Mailed

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