

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LEIDIANA R ACOSTA FIGUEREDO**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21A-UI-12307-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
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  
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Employer filed an appeal from the April 29, 2021 (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2021, at 2:00 p.m. Claimant participated. Spanish interpretation was provided by Luciana (ID 13437) from CTS Language Link. Employer participated through Karina Mellado, Human Resources Generalist. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

Whether claimant was overpaid benefits.

Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Laborer from October 21, 2019 until her employment with Tyson Fresh Meats ended on September 24, 2020. Claimant worked Monday through Saturday from 2:30 p.m. until midnight.

Employer has a points-based attendance policy. The policy is outlined in an employee handbook. Claimant received a copy of the policy during orientation. The policy requires employees to notify employer of absences prior to the start of their shifts by calling an attendance line.

Claimant last performed work for employer on July 25, 2020. Claimant was absent between July 26, 2020 and August 9, 2020 due to illness. Claimant tried to call the attendance line to report her absences but there was no answer.

On August 10, 2020, claimant reported to work but could not access the building with her card. There are approximately three employees working at the security desk where the card reader is located. Claimant did not report the issue with her card to the employees at the security desk or ask for assistance. Claimant left and decided to try again the following day. On August 11, 2020, claimant reported to work and could not access the building with her card. Claimant did not report the issue with her card to the employees at the security desk or ask for assistance. Claimant returned home. Claimant called employer; employer did not answer. The parties had no further contact. Claimant believed that her employment had been terminated.

On September 24, 2020, employer considered claimant to have abandoned her employment based upon her absences between August 10, 2020 and September 24, 2020 without notifying employer.

The administrative record reflects that claimant filed for and has received regular unemployment insurance (UI) benefits in the gross amount of \$5,337.81 for the 11-week period between August 9, 2020 and October 24, 2020. Claimant received no Federal Pandemic Unemployment Compensation (FPUC) after her separation from employment. Claimant received Pandemic Emergency Unemployment Compensation (PEUC) and Lost Wage Assistance (LWA).

Employer did not participate in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

Generally, when an individual mistakenly believes they are discharged from employment but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LeGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. Filed June 26, 1984).

Claimant was not discharged by employer on August 10, 2020. Claimant's belief that she had been discharged was erroneous. Claimant did not report to work after August 11, 2020. Therefore, claimant's separation is considered a voluntary quit without good cause attributable to employer. Claimant has not met her burden of proving that she voluntarily quit for good cause attributable to employer. Therefore, claimant is not eligible for unemployment insurance benefits.

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, but is not required to repay those benefits because employer did not participate in the fact-finding interview. Employer's account shall be charged.

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 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.

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 they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

In this case, claimant has received benefits to which claimant was not entitled. However, employer did not participate in the fact-finding interview. Therefore, claimant is not obligated to repay to the agency the benefits received and employer's account shall be charged.

Because claimant is not eligible for regular unemployment insurance benefits, claimant is also not eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B). Claimant has not received any FPUC benefits since the disqualifying separation and, thus, is not overpaid FPUC.

**DECISION:**

The April 29, 2021 (reference 04) unemployment insurance decision is reversed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied effective August 9, 2020 and continuing until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant has been overpaid unemployment insurance benefits, but is not obligated to repay the agency those benefits. Employer did not participate in the fact-finding interview and its account shall be charged. Claimant is not eligible for FPUC; claimant has received no FPUC benefits since the disqualifying separation and, thus, has not been overpaid FPUC.

**REMAND:**

The issues of whether claimant is overpaid PEUC and LWA are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



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Adrienne C. Williamson  
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August 5, 2021  
Decision Dated and Mailed

acw/mh