

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ARIANA D GUERENA
Claimant

APPEAL NO. 20A-UI-12244-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME FINDING ASSOCIATION
Employer

**OC: 10/20/19
Claimant: Respondent (2R)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 25, 2020, reference 05, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit due to detrimental working conditions and with good cause attributable to the employer. After due notice was issued, a hearing was held on December 4, 2020. Claimant Ariana Guerena did not provide a telephone number for the appeal hearing and did not participate. Judy Davidson represented the employer and presented additional testimony through Beth Anderson and Katy Gottschalk. Exhibit 1 was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the deputy's fact-finding notes for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.
Whether the claimant was overpaid regular unemployment insurance benefits.
Whether the claimant must repay overpaid regular benefits.
Whether the employer's account may be charged for regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation that must be repaid.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: American Home Finding Association (AHFA) is a social services agency, whose operations include a 15 bed emergency shelter for juveniles, as well as an eight-bed group home for juveniles. Ariana Guerena was employed by AHFA as a full-time youth counselor from December 2019 until May 26, 2020, when she voluntarily quit. Ms. Guerena usually worked the 2:00 p.m. to midnight shift, but worked other shifts as needed. Ms. Guerena's duties were to supervise juvenile residents, to facilitate life skills learning, to monitor chores, and to facilitate group activities.

Prior to May 23, 2020, Ms. Guerena worked only in the group home. The staff-to-resident ration in the group home was one-to-five. The staff-to-resident ratio in the emergency shelter was one-to-five. Beth Anderson, Administrative Assistant, is responsible for scheduling youth counselors. Ms. Anderson generally assigns employees to work primarily in the group home or primarily in the shelter, but schedules group home youth counselors to work in the shelter as needed. The employer discusses this scheduling protocol with employees at the start of employment.

Ms. Guerena last performed work for the employer on May 23, 2020, the day she was assigned to work in the emergency shelter. On May 26, 2020, Ms. Guerena sent a text message to the employer in which she stated that after thinking more about the events of the preceding weekend, she no longer felt comfortable or safe in the employment and would not be returning to the employment. The employer checked the "critical incident" log for the emergency shelter and did not see any reference to any such incidents occurring during Ms. Guerena's May 23 shift. A "critical incident" is a shelter or group home incident wherein there is a need to summon law enforcement for assistance. At the time Ms. Guerena separated from the employment, the employer continued to have work available for Ms. Guerena. A couple days before Ms. Guerena sent the text message in which she quit, the employer another shelter facility contacted the employer for an employment reference regarding Ms. Guerena and the employer provided a positive reference. Iowa Workforce Record reflect that Ms. Guerena did not go to work for a shelter facility after separating from this employer.

Ms. Guerena established an original claim for benefits that was effective October 20, 2020. Iowa Workforce Development set her weekly benefit amount for regular benefits at \$78.00. The original claim predated the AHFA employment and AHFA is not a base period employer for purposes of the claim and has not been charged for benefits. Ms. Guerena reopened her claim for benefits effective April 26, 2020, while she was still in the AHFA employment. Ms. Guerena made weekly claims for each of the 15 weeks between April 26, 2020 and August 22, 2020. Ms. Guerena received \$78.00 in regular benefits for the week that ended May 9, 2020. She received \$7.00 in regular benefits for the week that ended May 16, 2020. She received \$78.00 in regular benefits for each of the six weeks between May 24, 2020 and July 18, 2020. For each of the weeks for which Ms. Guerena received regular benefits, she also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC).

On September 18, 2020, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Guerena's separation from the employment. Judy Davidson, Child Welfare Program Director, represented the employer at the fact-finding interview.

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).

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

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

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes a May 26, 2020 voluntary quit without good cause attributable to the employer. Ms. Guerena did not participate in the appeal hearing and did not present any evidence to establish that her voluntary quit was based on intolerable and/or detrimental working conditions or for some other good cause attributable to the employer. The evidence in the record does not provide a basis for concluding that the quit was for anything other than dissatisfaction with the work environment or some other personal reason. Accordingly, Ms. Guerena is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Guerena must meet all other eligibility requirements. The employer is not a base period employer, has not been charged, and would not under any circumstances be subject to charge for benefits paid to Ms. Guerena during the claim year that began October 20, 2020 and that ended on October 17, 2020. See Iowa Code section 96.7(2) (regarding base period employer liability for benefits). Based on the disqualifying voluntary quit without good cause attributable to the employer, the employer's account shall not be charged for future benefits based on the wages earned for the period of December 2, 2019 through May 26, 2020.

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

Ms. Guerena received \$468.00 in regular benefits for the six weeks between the benefit week that ended May 30, 2020 through the benefit week that ended July 18, 2020. Because this decision disqualifies Ms. Guerena for those benefits and because the employer participated in

the fact-finding interview, Ms. Guerena is required to repay the \$468.00 in regular benefits she received for the six-week period that ended July 18, 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...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits for the six-week period that ended July 18, 2020, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for that period. The \$3,600.00 in FPUC benefits the claimant received for the six-week period that ended July 18, 2020 constitutes an overpayment of benefits that Ms. Guerena must repay.

This matter will be remanded to the Benefits Bureau for determination of whether the claimant was able work and available for work during the period of April 26, 2020 through May 30, 2020.

This matter will be remanded to the Benefits Bureau for determination of whether the claimant requalified for benefits subsequent to the May 26, 2020 separation.

DECISION:

The September 25, 2020, reference 05, decision is reversed. The claimant voluntarily quit the employment on May 26, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged. The claimant is overpaid \$468.00 in regular benefits for the six-week period that ended July 18, 2020. The claimant is overpaid \$3,600.00 in FPUC for the six-week period that ended July 18, 2020. The claimant must repay the overpaid regular and FPUC benefits.

This matter is **remanded** to the Benefits Bureau for determination of whether the claimant was able work and available for work during the period of April 26, 2020 through May 30, 2020.

This matter is **remanded** to the Benefits Bureau for determination of whether the claimant requalified for benefits subsequent to the May 26, 2020 separation.



James E. Timberland
Administrative Law Judge

December 11, 2020
Decision Dated and Mailed

jet/mh

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 on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**