

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOANNA GONSALEZ**  
Claimant

**APPEAL 20A-UI-15462-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA PREMIUM LLC**  
Employer

**OC: 08/16/20**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

**STATEMENT OF THE CASE:**

Iowa Premium, LLC., the employer/appellant, filed an appeal from the November 17, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2021. The employer participated through Veronica Hernandez. Ms. Gonzalez did not participate in the hearing. Official notice was taken of the administrative record.

**ISSUE:**

Was Ms. Gonzalez laid off, discharged for misconduct or did he voluntarily quit without good cause attributable to the employer?  
Was Ms. Gonzalez overpaid benefits?  
If so, should she repay the benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gonzalez began working for the employer on April 23, 2019. She worked as a full time production work. Her last day of work was August 7, 2020 when the employer let her go due to attendance issues.

The employer's policy provides as follows: a tardy or leaving work early results in 0.5 points; calling in sick, an excused absence or an unexcused absence results in 1 point; a No-Call/No-Show results in 2 points; and more than 12 points results in termination of employment. Points are accumulated on a rolling calendar basis. An employee is given a written warning after each 3 point increment and after one No-Call/No-Show. Employees may report an absence by calling the employer's automated absence line, contacting their manager or contacting human resources staff. If an employee contacts their manager or human resources staff, the manager or human resources staff would notify the clerks who manage the automated line. Ms. Gonzalez acknowledged receiving the policy on her hire date.

Ms. Gonzalez was given three written warnings in 2019 for attendance issues. Due to her not being absent or tardy and the rolling calendar, Ms. Gonzalez had only eight points by June 2020. On June 18, 2020, Ms. Gonzalez was written up for an unexcused absence on June 16. She had nine points at this time. Ms. Gonzalez was written up again on June 25 for unexcused absences on June 22 and June 23. She had eleven points at this time. Ms. Gonzalez was written up on July 22 for an unexcused absence on July 20. She had twelve points at this time. Ms. Gonzalez was written up again on July 23 for calling in sick that day. She had thirteen points at this time. Ms. Gonzalez was written up on July 29 for an unexcused absence on July 28. She had fourteen points at this time but the employer's records showed she had 15 points due to an employer error. On August 17, Ms. Gonzalez was written up for being tardy on July 29, for unexcused absences on August 3, 5 and 6 and for being tardy on August 7. The employer had no record of a doctor's note for any of these absences.

Ms. Gonzalez has received \$14,361.00 in REGULAR unemployment insurance (UI) benefits from August 16, 2020 through January 30, 2021. Ms. Gonzalez received \$2,100.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits from January 3, 2020 through January 26, 2021. The employer had the opportunity to and participated in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes Ms. Gonzalez was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a and (7) provide:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

With regard to absences, Iowa Admin. Code r. 871-24.32(7) provides:

(7) *Excessive* unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Absences in good faith, for good cause, with appropriate notice, are not misconduct, however. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer's interest is not shown and this is essential to a finding of misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10-11 (Iowa 1982).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this case, even not counting the July 23 write up Ms. Gonzalez received for calling in sick, by as of August 17, 2020 Ms. Gonzalez had accumulated sufficient points to justify termination under the employer's point system. Ms. Gonzalez did not participate in the hearing and presented no contrary evidence. The employer had met its burden to prove that Ms. Gonzalez was discharged for misconduct. Benefits are denied.

The administrative law judge further concludes Ms. Gonzalez has been overpaid REGULAR UI benefits in the amount of \$14,361.00, she has been overpaid FPUC benefits in the amount of \$2,100.00 and these benefits should be repaid.

Iowa Code §96.3(7) provides, in pertinent part:

*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.

(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.

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 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.

(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.

Ms. Gonzalez has been overpaid REGULAR UI benefits in the amount of \$14,361.00 as she was not qualified and/or was ineligible to receive REGULAR UI benefits.

Because Ms. Gonzalez is disqualified from receiving regular UI benefits, she is also disqualified from receiving FPUC benefits. While Iowa law does not require a claimant to repay regular UI benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC benefits. Therefore, the determination of whether Ms. Gonzalez must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that Ms. Gonzalez has been overpaid FPUC benefits in the gross amount of \$2,100.00.

**DECISION:**

The November 17, 2020, (reference 01) unemployment insurance decision is reversed. Ms. Gonzalez was discharged from employment due to job-related misconduct. 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. Ms. Gonzalez has been overpaid REGULAR UI benefits in the amount of \$14,361.00 and overpaid FPUC benefits in the amount of \$2,100.00 for a total of \$16,461.00, which must be repaid.



---

Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

February 16, 2021  
Decision Dated and Mailed

dz/kmj