

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DJENNY S MUKA
Claimant

RS HANLINE AND COMPANY INC
Employer

APPEAL 20A-UI-02150-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer/appellant, RS Hanline and Company Inc., filed an appeal from the March 4, 2020 (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 April 23, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Taylor Moody, human resources business partner. Rusty Hartshorne, plant manager, also testified.

The administrative law judge took official notice of the administrative records. 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.

Note to claimant: Additional information about food, housing, and other resources, can be found by dialing 211 or at www.211iowa.org.

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: Ms. Muka was employed full-time as a general laborer and was separated from employment on November 16, 2019, when she quit the employment. Continuing work was available.

Ms. Muka last performed work on November 8, 2019. She took a prescheduled, preapproved vacation November 11-15, 2019. She did not return to employment on November 16, 2019.

Approximately a week later, Ms. Muka's friend called Mr. Hartshorne and stated the Ms. Muka's husband had died. He told the friend that Ms. Muka could take time off, through bereavement and a leave of absence if needed. She would just need to fill out paperwork.

No additional contact was made by Ms. Muka or on her behalf, until approximately two months later, she visited the employer to retrieve her final paystubs. At that time, she informed Mr. Hartshorne that she had a new job at Walmart. It is unclear from the administrative records if she has earned sufficient wages from Walmart or since leaving RS Hanline and Company Inc., to have requalified for unemployment insurance benefits. Ms. Muka did not attend the hearing.

The administrative record reflects that Ms. Muka has received unemployment benefits in the amount of \$3,915.00, since filing a claim with an effective date of February 16, 2020. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Ms. Moody attended.

Ms. Muka also received federal unemployment insurance benefits through the Federal Pandemic Unemployment Compensation (FPUC).

REASONING AND CONCLUSIONS OF LAW:

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

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.

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.*

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Based upon the evidence presented, the administrative law judge concludes the Ms. Muka voluntarily quit when she did not return from vacation. The administrative law judge is sympathetic to the claimant, and persuaded the employer would have worked with her to take a leave of absence but preserve her employment. Unfortunately, Ms. Muka did not make contact again with the employer until two months later when she picked up paystubs. While Ms. Muka had personally good reasons to quit the employment, she did not establish good cause attributable to the employer, according to Iowa law. Benefits are denied.

The next issues to address are overpayment of benefits and whether the employer will be relieved of charges.

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 Ms. Muka’s separation was disqualifying, benefits were paid to which she was not entitled. The claimant has been overpaid benefits in the amount of \$3,915.00. 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. In this case, the claimant has received benefits but was not eligible for those benefits. The employer satisfactorily participated in the scheduled fact-finding interview by way of Taylor Moody. Since the employer did participate in the fact-finding interview, Ms. Muka is obligated to repay the benefits she received and the employer’s account shall not be charged.

The issues of whether Ms. Muka has requalified and whether she has been overpaid federal unemployment insurance benefits under Federal Pandemic Unemployment Compensation (FPUC) are remanded to the Benefits Bureau for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, 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>.

DECISION:

The March 4, 2020 (reference 01) initial decision is reversed. The claimant voluntarily 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 benefits in the amount of \$3,915.00 and must repay the benefits because the employer participated in the fact-finding interview. The employer’s account is relieved of charges.

REMAND: The issues of whether the claimant has requalified and whether she has been overpaid federal unemployment insurance benefits under Federal Pandemic Unemployment Compensation (FPUC) are remanded to the Benefits Bureau for an initial investigation and decision.

Jennifer L. Beckman

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

April 27, 2020
Decision Dated and Mailed

jlb/scn