

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IANG BAWR
Claimant

APPEAL 20A-UI-09794-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STAFFING INC
Employer

**OC: 04/12/20
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
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, Iowa Staffing Inc., filed an appeal from the August 5, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing.

A first telephone hearing was scheduled for September 30, 2020. Alejandra Rocha attended for the employer. Claimant, Iang Bawr, attended. Cund Lian, her husband, also attended. A Hakha-Chin interpreter from CTS Language Link provided interpretation services. No testimony was taken and the hearing was continued to allow Ms. Bawr time to have employer’s proposed exhibits translated for her.

A second telephone hearing was held on November 4, 2020. Alejandra Rocha attended for the employer. Claimant, Iang Bawr, attended. A Hakha-Chin interpreter from CTS Language Link provided interpretation services.

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 claimant voluntarily quit the employment with good cause attributable to 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?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed on assignment at Marzetti's Frozen Pasta from August 28, 2019 until April 10, 2020. She worked the first shift, which began at 6:00 or 7:00 a.m. and ending between 3:30-4:30.

Claimant was then offered a position with Katecho. The shift was from 7:00 a.m. to 7:00 p.m. Claimant declined the position because her childcare provider closed at 5:00 and her husband was unable to move his work shift. Employer stated no other assignments were available to claimant.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,754.00, since filing a claim with an effective date of April 12, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$5,400.00 in FPUC.

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. Rocha completed the written fact-finding interview document.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with 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. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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.*

The claimant in this case worked at Marzetti's Frozen Pasta until April 10, 2020 and was reassigned to Katecho effective April 13, 2020. Claimant quit the employment because of the change of shifts. Claimant's childcare provider was not open past 5:00 p.m. which is why she could not work the new assignment. Inasmuch as the claimant's changed from ending at 3:30 or 4:30 to 7:00 p.m., and employer has not established misconduct as a reason for the effective demotion, the change of the original terms of hire is considered substantial. Thus, the separation was with good cause attributable to the employer. Claimant is allowed benefits, provided she is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

The final issue to address is whether the claimant is eligible for Federal Pandemic Unemployment Compensation (FPUC).

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 allowed regular unemployment insurance benefits, she is also eligible for FPUC, provided she is otherwise eligible. The employer is not charged for these federal benefits.

DECISION:

The August 5, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. She is not overpaid benefits. The employer's account cannot be relieved of charges associated with the claim for regular unemployment insurance benefits. The claimant is also eligible for FPUC, provided she is otherwise eligible.



Jennifer L. Beckman
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November 12, 2020
Decision Dated and Mailed

jlb/mh