

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RACHAEL H ARMITAGE
Claimant

APPEAL NO: 20A-UI-03080-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 03/15/20
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2020, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 11, 2020. The claimant participated in the hearing. Theresa McLaughlin, Vice-President of Human Resources, participated in the hearing on behalf of the employer.

ISSUE:

The issues are whether the claimant voluntarily left her employment with good cause attributable to the employer and whether she is overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time market team member for Fareway Stores from August 24, 2017 to September 5, 2019. She voluntarily left her employment because she planned to attempt to start her own business as a baker from home. She did not start her own business and in November 2019 she started a part-time job at Ivy Bake Shop.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of \$1,387.00 in unemployment insurance benefits for the seven weeks ending May 2, 2020. The claimant has also been paid \$3,000.00 in Federal Pandemic Unemployment Compensation for the three weeks ending May 8, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. 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:

(19) The claimant left to enter self-employment.

The claimant left her employment September 5, 2019, because she planned to start her own business but did not do so. Instead, she accepted another part-time position with a bakery in November 2019. Her decision to leave to become self-employed is not considered a good-cause reason for voluntarily quitting attributable to the employer according to Iowa law. Therefore, benefits must be denied. Because benefits are denied, the issues of overpayment of benefits and overpayment of Federal Pandemic Compensation benefits must be addressed.

Iowa Code section 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.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$1,387.00 for the seven weeks ending May 2, 2020, pursuant to Iowa Code section 96.3(7) as the disqualification decision that created the overpayment decision is affirmed.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

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 \$600.00 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

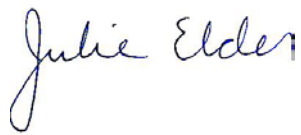
- (2) Repayment.—In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies the claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits the claimant received, she also received an additional \$3,000.00 in Federal Pandemic Unemployment Compensation benefits for the three weeks ending May 8, 2020. The claimant is required to repay those benefits as well.

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 April 9, 2020, reference 01, decision is affirmed. The claimant voluntarily left her 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 received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$1,387.00 for the seven weeks ending May 2, 2020. The claimant is overpaid federal Pandemic Unemployment Compensation of \$3,000.00 for the three weeks ending May 8, 2020.



Julie Elder
Administrative Law Judge

May 12, 2020
Decision Dated and Mailed

je/scn