

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAUREN K POUNDS**

Claimant

**HARVEYS BR MANAGEMENT CO INC**

Employer

**APPEAL 21A-UI-18885-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/25/21**

**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Harveys BR Management Co Inc, the employer/appellant, filed an appeal from the August 10, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2021. The employer participated through Mitchell Parker, human resources, and Jackie Boudreaux, Equifax hearing representative. Ms. Pounds did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted into evidence.

**ISSUE:**

Was Ms. Pounds discharged for disqualifying job-related misconduct?

Was Ms. Pounds 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. Pounds began working for the employer on August 27, 2018. She worked as a full-time table games dealer.

Ms. Pounds was on a COVID-19 Leave of Absence (LOA) from November 3, 2020 to November 30, 2020. As of November 30, Ms. Pounds continued to experience COVID-19 symptoms, but she was past the fourteen day self-quarantine period recommended by public health guidelines. Usually, employees must begin the process of requesting medical leave. In this case, the employer contacted their third party administrator and began the process for Ms. Pounds. The employer listed December 21 as a place-holder end date for Ms. Pounds' medical leave. The employer told Ms. Pounds that it had done so. The employer told Ms. Pounds that she would be required to provide information from her healthcare provider about her illness and expected

return date to the third-party administrator by December 14. The December 21 place-holder end date for Ms. Pounds' medical leave was to be updated based on information from her healthcare provider. Ms. Pounds was in continuous communication with the employer but she did not provide the information to the third-party administrator by December 14.

On December 19, December 22, and December 23, the employer asked Ms. Pounds for the fax number for her healthcare provider so the employer could send the medical leave paperwork to her healthcare provider. Ms. Pounds did not provide the fax number. Ms. Pounds applied for Family Medical Leave Act (FMLA) leave sometime in late December.

On December 23, the employer gave Ms. Pounds a written warning for accruing too many attendance points. Ms. Pounds' manager gave her the warning in a telephone conversation that day. Ms. Pounds' manager told her that she had accrued attendance points for December 22 and December 23 since it was past the December 21 place-holder end date for her medical leave and she had not provided information from her healthcare provider. Ms. Pounds' manager told her that since she was not on any leave – not on COVID-19 LOA after November 30, and not on medical leave after December 21 – she must call-in each day “Pending FMLA” leave.

Later that day, Mr. Parker told Ms. Pounds via text that she had accrued attendance points for December 22 and December 23 since it was past the December 21 place-holder end date for her medical leave and she had not provided information from her healthcare provider. Mr. Parker also told Ms. Pounds that since she was not on any leave – not on COVID-19 LOA after November 30, and not on medical leave after December 21 – she must call-in each day “Pending FMLA” leave. Ms. Pounds asked for the telephone number or email address at which she was to call in. The employer told her that it would be the normal telephone number she would usually use to call in.

Ms. Pounds was scheduled to work on December 27, December 28 and December 29. Ms. Pounds did not attend work all three days. The employer called her and left her a voice message on December 27 and December 28. Ms. Pounds did not respond to the voice messages. The employer called Ms. Pounds on December 29 but was not able to leave a voice message as Ms. Pounds voice mailbox was full. Ms. Pounds did not call-in that day. The employer's policy provides that employees who No-Call/No-Show for three consecutive scheduled shifts are considered to have abandoned their job.

Ms. Pounds contacted Mr. Parker on January 4, 2021 and told him that when she contacted the employer's third-party leave administrator, the administrator told her that her employment had been terminated. Ms. Pounds told Mr. Parker that she did not realize that she needed to call in each day pending her FMLA leave because the medicine she was on made her foggy, she had not checked her schedule, and she was not near her phone to call in. Mr. Parker told Ms. Pounds that she had been separation from employment after she did not call in for three consecutive days.

Ms. Pounds has received \$7,696.00 in REGULAR unemployment insurance (UI) benefits between December 27, 2021 and April 17, 2021. Ms. Pounds received \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits between January 3, 2021 and April 17, 2021. The employer did not participate in the fact-finding interview. The employer missed the cold-call fact finding interview and was not able to return the call during the thirty minute call-back period.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Pounds' separation from the employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, Ms. Pounds was a No-Call/No-Show on December 27, December 28, and December 29, 2020. The employer had told Ms. Pounds on December 23 both in a telephone call and via text that she was required to call in each day. The employer also called Ms. Pounds on December 27 and December 28 and left her voice messages about her No-Call/No-Shows those days. The employer called but was unable to leave a voice message on December 29. Ms. Pounds was dealing with her health in the best way she could during this time. However, she did not call-in or attend work for three consecutive days in violation of the employer's policy. Benefits are denied.

The administrative law judge further concludes Ms. Pounds has been overpaid REGULAR UI benefits in the amount of \$7,969.00, but she is not required to repay these benefits. Ms. Pounds has been overpaid FPUC benefits in the amount of \$4,800.00, which she must repay.

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.

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...

Ms. Pounds has been overpaid REGULAR UI benefits in the amount of \$7,969.00 as he is not qualified and/or is ineligible to receive REGULAR UI benefits as of December 29, 2020 when she was separated from employment. Since the employer did not participate in the fact-finding interview, Ms. Pounds is not required to repay these benefits.

Because Ms. Pounds 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. Pounds must repay FPUC benefits does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that Ms. Pounds has been overpaid FPUC benefits in the gross amount of \$4,800.00, which must be repaid.

Even though Ms. Pounds is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible.

**DECISION:**

The August 10, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Pounds 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.

Ms. Pounds has been overpaid REGULAR UI benefits in the amount of \$7,969.00, which she is not required to repay.

Ms. Pounds has been overpaid FPUC benefits in the amount of \$4,800.00, which must be repaid.



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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

October 27, 2021  
Decision Dated and Mailed

dz/kmj

**NOTE TO MS. POUNDS:**

- 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 you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits 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've received so far.**

- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on April 25, 2021.

**ADDITIONAL NOTE TO MS. POUNDS:**

- This decision determines you have been overpaid FPUC 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.
- **You may also request a waiver of this overpayment either 1) online, OR 2) in writing by mail.**
- The **online request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written request** must include the following information:
  - Your name & address.
  - Decision number/date of decision.
  - Dollar amount of overpayment requested for waiver.
  - Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development  
Overpayment waiver request  
1000 East Grand Avenue  
Des Moines, IA 50319

- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.