

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EVAN L HOWING
Claimant

MATA ENTERPRISES INC
Employer

APPEAL 20A-UI-11445-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/19/20
Claimant: Respondent (2)**

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:

On September 15, 2020, Mata Enterprises Inc (employer/respondent) filed an appeal from the September 9, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on June 26, 2020, because work conditions were detrimental to him.

A telephone hearing was held on November 9, 2020. The parties were properly notified of the hearing. Employer participated by owner Alex Ward, Sr. (AI). Employer was represented by Attorney Christopher Sandy. Participating as a witness for employer was supervisor Alex Ward, Jr. (Alex). Evan Howing (claimant/respondent) participated personally. He was represented by his mother, Michelle Howing. His brother, Aaron Howing, participated as a witness.

Employer's exhibits A-C were admitted. Claimant's exhibits 1, 2, and 4-7 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. 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:

Claimant began working for employer on February 24, 2020. Employer is a contractor for FedEx. Claimant was employed as a full-time delivery driver. In this position he delivered packages. Claimant's immediate supervisor was Alex.

Claimant initially worked approximately 40 hours per week for employer. However, when the pandemic began, employer became very busy. Alex asked claimant on many occasions to work additional hours. Claimant was aware at the time of hire that his hours may fluctuate and he may be asked to work additional hours, depending on how busy employer was. Claimant never refused to work additional hours when Alex asked that he do so, even though he often did not wish to work the additional hours. Claimant felt obligated not to decline the hours, because he was friends with Alex and knew that employer was very busy. Claimant was never required to work additional hours, nor was he threatened with discipline if he refused additional hours.

Claimant and Alex were friends outside of work and often texted and spent time together outside of work hours. Alex would sometimes text claimant in the evening regarding work. This was because Alex would often not know additional help was needed until the evening prior. Claimant did not like Alex texting him about work outside of work hours, particularly in the evenings. However, claimant never told Alex or AI that he did not wish to be contacted about work outside of work hours.

Claimant eventually let Alex know that he was feeling stressed by the additional work and wished to be scheduled so that he would have two consecutive days off each week. Alex attempted to accommodate this request but was not always able to do so. Alex let claimant know employer was in the process of hiring more drivers to alleviate the additional hours claimant and others were being asked to work, but that it would take some time to do so.

Claimant resigned on the evening of Friday, June 26, 2020. Alex had asked claimant earlier that week to cover for another employee on Saturday, June 27, 2020. Claimant did not indicate that was a problem and agreed to do so.

The evening before claimant was scheduled to cover for the other employee, he was feeling acute stress and anxiety related to work. His brother, Aaron, saw this and was concerned. Aaron used claimant's phone to send a text message to Alex at 9:45 p.m., saying he was resigning effective immediately. In the message, Aaron wrote the reasons for quitting were that "things have not change[d] as promised," it was "not what [he] signed up for" and he had "a great job opportunity that popped up for [him] with a small window." Claimant was aware Aaron sent this message and did not attempt to stop him from doing so or otherwise notify Alex that he did not send the message or did not wish to resign.

Claimant told Alex early on in his employment that he had been diagnosed with OCD and anxiety. However, he did not indicate that it was negatively impacting his work. Claimant had also told Alex at various times that he was feeling stress, but again did not indicate it was a health issue impacting his work. Prior to resigning, claimant did not notify Alex or AI that he needed a reasonable accommodation for a medical issue; that he did not wish to be contacted about work outside of work hours; or that he would be forced to resign if these issues were not addressed. Claimant did not quit to accept another job and has not been employed elsewhere since resigning. Claimant has not attempted to return to work for employer.

Employer did participate in the fact-finding process. It provided essentially the same information as set forth above at that time.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$328.00 for a total of 15 weeks, from the benefit week ending July 25, 2020 and continuing through the benefit week ending October 31, 2020. The total amount of benefits paid to date is \$4,920.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$600.00 for one week, the benefit week ending July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the September 9, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on June 26, 2020, because work conditions were detrimental to him is REVERSED.

The administrative law judge finds claimant's quitting was voluntary and without good cause attributable to employer. As such, the separation from employment was disqualifying and benefits are denied from the date of separation. This disqualification will continue until claimant earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

- d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

- f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(4) The claimant left due to intolerable or detrimental working conditions.

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee

complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant was evasive in responding to questions from both the administrative law judge and employer's counsel. Claimant had to be reminded numerous times to please respond to questions as asked. Instead of responding directly to questions, claimant would at times respond with questions or offer testimony that was unresponsive and/or irrelevant. Claimant repeatedly brought up issues that did not appear to be relevant to the separation from employment, including alleging that he was not paid for work; that he was allegedly paid a salary rather than hourly, which he believed to be illegal; and that he had worked through an injury. Along these same lines, claimant gave differing reasons for why he resigned at different times during the hearing, including that he resigned due to a breach of the employment agreement and due to Alex allegedly saying something negative about claimant to a mutual friend.

In contrast, the administrative law judge found testimony from employer's witnesses to be responsive, clear, and consistent. For these reasons, the administrative law judge found the testimony offered by employer to be more reliable than claimant's. Factual disputes were settled accordingly.

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

As an initial matter, the administrative law judge finds claimant did voluntarily quit. While claimant did not send the message indicating he was resigning, he was aware Aaron sent this message and did not attempt to stop him from doing so or otherwise notify Alex that he did not send the message or did not wish to resign. Because claimant was aware of Aaron sending the message and took no steps to stop him from sending it or to retract it thereafter, claimant made a conscious decision to separate from employment.

The administrative law judge finds claimant resigned due to the acute stress and anxiety he was experiencing on the evening that message was sent. The administrative law judge is sympathetic to this reason. This was a compelling reason to leave work. But claimant did not tell employer this was the reason that he was leaving; he did not present to employer a doctor's note recommending he leave; nor did he attempt to return to work after recovering. If he had communicated with employer about his need to leave, had attempted to return to work when able, and employer then refused to return him to work or there was work unavailable, he would likely be eligible for benefits.

While claimant did tell Alex about his medical diagnoses early on during the employment and later indicated he was stressed and asked to be scheduled for consecutive days off, he did not decline when Alex asked him to work additional hours. While the administrative law judge appreciates that claimant felt an obligation or duty to accept the hours, employer did not require him to work those hours or threaten discipline if he refused them. Neither did claimant put employer on notice that he needed a reasonable accommodation for a medical issue; that he did not wish to be contacted about work outside of work hours; or that he would be forced to resign if these issues were not addressed.

While claimant was not required to notify employer of these issues and give it a chance to address them prior to resigning, his failure to do so makes it difficult to find claimant's resignation was with good cause attributable to employer. The administrative law judge finds a reasonable person would not have found the working conditions so intolerable or detrimental as to justify quitting without first notifying employer of the conditions and allowing it an opportunity to resolve them.

For the reasons set forth above, the administrative law judge finds claimant's quitting was voluntary and without good cause attributable to employer. As such, the separation from employment was disqualifying and benefits are denied. This disqualification will continue until claimant earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

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.

- 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 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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$328.00 for a total of 15 weeks, from the benefit week ending July 25, 2020 and continuing through the benefit week ending October 31, 2020. The total amount of benefits paid to date is \$4,920.00. Because the administrative law judge now finds claimant disqualified from benefits from the date of separation, he has been overpaid benefits in that amount.

The administrative law judge finds employer did participate in the fact-finding process. Because employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall be recovered from claimant. 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.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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 disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$600.00. Claimant is required to repay this amount.

DECISION:

The September 9, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on June 26, 2020, because work conditions were detrimental to him is REVERSED.

The administrative law judge finds claimant's quitting was voluntary and without good cause attributable to employer. As such, the separation from employment was disqualifying and benefits are denied from the date of separation. This disqualification will continue until claimant earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$4,920.00. Benefits shall be recovered. 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. Claimant has also been overpaid FPUC in the amount of \$600.00. Claimant is required to repay this amount.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 20, 2020
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.