

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVAUGHN D JENKINS
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-12122-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
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
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On October 1, 2020, Hy-Vee, Inc. (employer) filed an appeal from the September 22, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Devaughn D. Jenkins (claimant) voluntarily quit due to detrimental working conditions. The parties were properly notified about the hearing held by telephone that began on December 2 and concluded on December 16, 2020. The claimant participated personally. The employer participated through Michele Millang, Office Manager, and Mike Whitten, Director of Bakery Manufacturing, and it was represented by Barbara Buss, UI Hearing Representative with Corporate Cost Control. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?
Has the claimant been overpaid Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Team Lead beginning on November 6, 2017, and was separated from employment on June 7, 2020, when he quit. The claimant has had issues with the work environment since he started. The claimant believed he and five other employees, a group comprised of African American and Caucasian employees, were treated differently by management than other employees. When the claimant brought this up to Michele Millang, Office Manager, and Mike Whitten, Director of Bakery Manufacturing, they would tell him if he did not like working there, then he could find another job.

During the early months of 2020, the claimant learned from a Filipino co-worker that Millang had advised her and another Filipino employee to speak English in the break room. On June 6, the claimant learned from his African American supervisor that his Caucasian supervisor had used the word "Negro" while they were discussing current affairs earlier in the week. The claimant was offended by the use of that word.

On June 7, the claimant reported the incident to Millang and Whitten. They explained the other supervisor had already brought it to their attention and they had disciplined the supervisor who used the word. The claimant explained he no longer felt comfortable reporting to that supervisor and asked to be moved to a day shift. They denied the request because they did not have a day shift position available. The claimant submitted his resignation and left.

The claimant has received \$2,267.00 in regular unemployment benefits and \$3,000.00 in FPUC, since filing a claim with an effective date of June 7, 2020, for the five weeks ending July 11, 2020. The administrative record establishes that the employer did not answer when called for the fact-finding interview, did not provide the name and phone number of a firsthand witness, or provide detailed information about the end of the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

I. Did the claimant voluntarily quit employment with good cause attributable to the employer?

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

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:

...

(6) The claimant left as a result of an inability to work with other employees.

...

(18) The claimant left because of a dislike of the shift worked.

...

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.26(3) 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:

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

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).

The claimant has not met the burden of proof to establish that he left due to intolerable or detrimental working conditions. The claimant was not present or the subject of the alleged racially based comments. Additionally, the alleged different treatment in terms of employment happened to a handful of employees, which included both African American and Caucasian employees. While his supervisor's statement was not appropriate in the workplace, the employer counseled the supervisor once they learned of the conduct and there were no other incidents after the counseling. The claimant's decision to leave because he did not agree with the employer's management decisions does not constitute good cause attributable to the employer. Accordingly, benefits are denied.

II. Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid regular unemployment insurance benefits, but he does not have to repay those benefits because the employer failed to participate in the fact-finding process.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

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. 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 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.

(2) 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 state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10(1) 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.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. 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 an allowance based on a separation is reversed on appeal 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 they 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 \$2,267.00 in regular unemployment insurance benefits, but he was not eligible for those benefits. The employer failed to participate in the fact-finding interview by being available at the phone number provided, providing the name and phone number of a firsthand witness, or providing documentation that, without rebuttal, would have resulted in a denial of benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the regular unemployment insurance benefits he received and the employer's account shall be charged.

III. Has the claimant been overpaid FPUC?

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid FPUC, which must be repaid.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(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 benefits, he is also disqualified from receiving FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The administrative law judge concludes that the claimant has been overpaid FPUC in the gross amount of \$3,000.00 for the five-week period between June 7 and July 11. The claimant must repay these benefits.

DECISION:

The September 22, 2020, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until he has worked and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid \$2,267.00 in regular unemployment insurance benefits, but he is not required to repay those benefits because the employer did not participate in the fact-finding interview and its account shall be charged. The claimant has been paid \$3,000.00 in FPUC, which must be repaid.



Stephanie R. Callahan
Administrative Law Judge

January 8, 2021
Decision Dated and Mailed

src/scn

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, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.