

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERRY P MOTES

Claimant

APPEAL 20A-UI-09742-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD

Employer

OC: 03/29/20

Claimant: Appellant (1/R)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Sherry Motes (claimant) appealed a representative's August 5, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Parco (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2020. The claimant participated personally. The employer participated by Juliet Diaz, Human Resources Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 17, 2019, as a part-time crewmember. From February 12, 2020, through March 12, 2020, the claimant requested time off due to a death in the family. The employer granted the request. The claimant returned and worked on March 13, 14, and 17, 2020.

The claimant had childcare issues and had to quarantine due to the Covid-19 pandemic from March 18, 2020, through March 26, 2020. The employer allowed the claimant time off. The claimant returned to work on March 27, 2020, and told the employer she did not have childcare due to the closure of her daycare. The employer granted the claimant request for a twelve-week leave of absence. The claimant was supposed to return to work on June 1, 2020.

The employer sent out letters to employees on May 15, 2020, regarding returning to work. The employer talked to the claimant and said her return to work date was June 1, 2020. The claimant did not return to work on June 1, 2020, because she did not have childcare. Work was available should the claimant wish to return to work with the employer. On June 9, 2020, the employer assumed the claimant resigned when she did not return to work.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$210.00. The claimant received benefits from March 29, 2020, to the week ending August 1, 2020. This is a total of \$3,000.00 in state unemployment insurance benefits after the separation from employment. She also received \$10,200.00 in Federal Pandemic Unemployment Compensation for the seventeen-week period ending July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

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(17) 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:

- (17) The claimant left because of lack of child care.

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). The claimant's intention to voluntarily leave work was evidenced by the claimant's words and actions. The claimant stopped appearing and quit work. When an employee quits work to take care of a child, the leaving is without good cause attributable to the employer. The claimant left work to take care of her child. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(8) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

When an employee is spending working hours caring for a child, she is considered to be unavailable for work. The claimant was devoting her time and efforts to caring for her child. She is considered to be unavailable for work.

Even though the claimant 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 the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

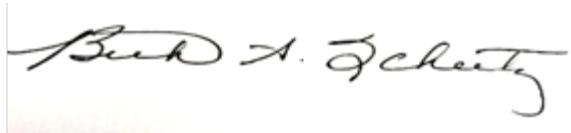
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's August 5, 2020, decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is not able and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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>.



Beth A. Scheetz
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

bas/scn