

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENNETH D BERRY
Claimant

BILLION HAWKEYE INC
Employer

APPEAL NO. 21A-UI-06663-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Respondent (2R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 10, 2021, reference 01, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant left the employment on September 1, 2020 to care for an ill or injured family member and, after their recovery was complete, offered to return to work, but the employer did not have work available. After due notice was issued, a hearing was held on May 12, 2021. The claimant did not provide a telephone number for the appeal hearing and did not participate. Dallas Grijalva represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX and WAGE-A. The administrative law judge took official notice of the fact-finding interview materials for the limited purpose of documenting the employer's participation.

ISSUES:

Whether the claimant voluntary quit the employment without good cause attributable to the employer.

Whether the claimant left the employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and whether, after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, but the employer did not make work available and the claimant did not accept any other employment during the period away from the employer.

Whether the claimant was overpaid regular state benefits.

Whether the claimant must repay regular state benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time automobile sales associate from 2018 and last performed work for the employer on September 1, 2020. The claimant worked at Billion Chevy Buick GMC

Cadillac of Iowa City. Levi Walker is General Manager at that dealership and was the claimant's supervisor. Tyler Coon is a Sales Manager at that dealership and also supervised the claimant's employment. On September 1, 2020, the claimant told the employer he was giving his two-week notice that he would be quitting to spend more time with his family. However, rather than staying to work the two weeks, the claimant cleaned out his desk and voluntarily separated from the employment that same day. The claimant made no reference to needing to care for a sick family member. The employer continued to have work available for the claimant at the time he separated from the employment. The claimant did not make any subsequent attempt to return to the employment.

The claimant established an original claim for benefits that was effective December 27, 2020. Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$512.00. This employer is the sole base period employer. The claimant received \$8,192.00 in regular state benefits for 16 weeks between December 27, 2020 and April 17, 2021. The claimant also received \$4,800.00 in Federal Pandemic Unemployment Compensation for that same period.

On February 8, 2021, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. Dallas Grijalva, Human Resources Manager, participated on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(c) 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.26(8) provides:

This separation is not considered to be a voluntary quit.

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or marriage.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record establishes a September 1, 2020 voluntary quit that was without good cause attributable to the employer. The claimant initiated the separation on September 1, 2020. The claimant made the vague statement to the employer that he wanted to focus on his family. The claimant did not participate in the appeal hearing and presented no evidence regarding a family member illness necessitating his departure from the employment or any attempt to return to the employment. The claimant presented no evidence suggesting the employer did anything to prompt the separation. The weight of the evidence establishes a voluntary quit for personal reasons. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$8,192.00 in regular state benefits for 16 weeks between December 27, 2020 and April 17, 2021, but this decision disqualifies the claimant for those benefits. Accordingly, the regular state benefits the claimant received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid regular state benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$4,800.00 in Federal Pandemic Unemployment Compensation the claimant received for the period of December 27, 2020 and April 17, 2021.

DECISION:

The February 10, 2021, reference 01, decision is reversed. The claimant voluntarily quit the employment on September 1, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$8,192.00 in regular state benefits for 16 weeks between December 27, 2020 and April 17, 2021. The claimant is required to repay the overpaid regular state benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$4,800.00 in Federal Pandemic Unemployment Compensation the claimant received for the period of December 27, 2020 and April 17, 2021.



James E. Timberland
Administrative Law Judge

May 20, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- 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 are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA 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 for the affected period, you may be required to repay the benefits you have received.**