

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER WILKINSON**

Claimant

**JOHNSTON COMMUNITY SCHOOL DIST**

Employer

**APPEAL 21A-UI-17872-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/23/21**

**Claimant: Respondent (2R)**

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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:**

Johnston Community School District., the employer/appellant, filed an appeal from the August 5, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 5, 2021. The employer participated through Anthony Spurgetis, director of human resources. Ms. Wilkinson did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did Ms. Wilkinson voluntarily quit without good cause attributable to the employer?  
Was Ms. Wilkinson 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. Wilkinson began working for the employer on October 24, 2016. She worked as a full-time night custodian. Her employment ended on May 4, 2021.

In May 2017, Ms. Wilkinson fell at work. She reported the incident to the employer, but also reported that she was not injured. In 2018, Ms. Wilkinson filed a worker's compensation claim with the employer for a wrist injury. The workers compensation medical providers determined that Ms. Wilkinson's injury was not work related. On February 13, and again on June 17, 2020, Ms. Wilkinson filed an incident report telling the employer that she fell at work. Both times Ms. Wilkinson reported no injuries.

Ms. Wilkinson worked on Friday, April 30, 2021. She took off work for vacation on Monday, May 3. On May 4, Ms. Wilkinson went to the employer's central district office and gave the

receptionist a resignation letter telling the employer she resigned effective that day. Ms. Wilkinson did not provide a reason in her letter. At the time of her resignation, Ms. Wilkinson was not on any work restrictions from her doctor.

Ms. Wilkinson has received \$7,008.00 in REGULAR unemployment insurance (UI) benefits from May 23, 2021 through September 11, 2021. Ms. Wilkinson received \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits as of May 23, 2021, the effective date of her claim. Ms. Wilkinson received \$900.00 gross in Lost Wage Assistance Payments (LWAP) between May 23, 2021 and June 12, 2021. Iowa Workforce Development has not addressed whether Ms. Wilkinson has been overpaid LWAP benefits.

The employer had the opportunity to and participated in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Wilkinson's 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(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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. Wilkinson resigned on May 4, 2021. Ms. Wilkinson was not on any work restrictions from her doctor, and she provided no reason in her resignation letter. Ms. Wilkinson did not participate in the hearing, and provided no evidence disagreeing with the employer's evidence. Ms. Wilkinson's resignation is without good cause attributable to the employer. Benefits are denied.

The administrative law judge further concludes Ms. Wilkinson has been overpaid REGULAR UI benefits in the amount of \$7,008.00.

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. Wilkinson has been overpaid REGULAR UI benefits in the amount of \$7,008.00 as she was not qualified and/or was ineligible to receive REGULAR UI benefits. The employer participated in the fact-finding interview, so Ms. Wilkinson should repay these benefits.

Since Ms. Wilkinson has not received any FPUC benefits, she has not been overpaid FPUC benefits.

**DECISION:**

The August 5, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Wilkinson 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. Wilkinson has been overpaid REGULAR UI benefits in the amount of \$7,008.00, which must be repaid.

Ms. Wilkinson has not been overpaid FPUC benefits.

**REMAND:**

The issue of whether Ms. Wilkinson is overpaid LWAP benefits is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



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Daniel Zeno  
Administrative Law Judge  
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October 7, 2021  
Decision Dated and Mailed

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