

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACKIE L EHLTS

Claimant

APPEAL NO. 20A-UI-11940-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING INC

Employer

OC: 03/29/20

Claimant: Respondent (2R)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated September 22, 2020, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 1, 2020. Claimant participated personally. Employer participated by Colleen McGuinty. Employer's Exhibits 1 was admitted into evidence.

ISSUES:

Did the claimant quit by not requesting an additional work assignment within three business days of the end of the last assignment?

Whether claimant was overpaid benefits?

Whether claimant is eligible for FPUC benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired by employer on April 1, 2019 and placed with Plastic Products Company, the only placement claimant had throughout her time with employer. At the time of hire, claimant signed and received a document acknowledging that she needed to be in touch with employer within three days of the ending of an assignment requesting another assignment. Claimant last worked for employer on June 1, 2020. Claimant was removed from her assignment after that date. Claimant found out about the removal by a call from employer. Employer took notes during the call and specifically noted that claimant did not ask for additional

work. Employer's witness was very specific with notes taken by a third party, and claimant's testimony was less precise about who she spoke with, when the conversation took place, and what was said. Employer discharged claimant on June 4, 2020 because claimant had not requested a new placement within three days of the ending of an assignment.

Employer then specifically mentioned when claimant was called and texted about assignment offers in claimant's area on July 14, and October 13 and 22, 2020. Claimant did not respond to the texts or messages.

Claimant has received state unemployment benefits in this matter in the amount of \$3,077.00 in regular benefits and \$3,848.00 in PEUC benefits. \$888.00 of the state benefits were received prior to the job separation.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter in the amount of \$7,200.00. \$1,800.00 in FPUC benefits were received prior to the claimant's job separation.

Employer did substantially participate in fact finding in this matter by participating in a fact-finding interview. (A search by the administrative law judge does not show fact findings as having been entered into the record at all.)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5(1)j 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:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment." (Emphasis supplied.)

In this case, the employer had notice of the claimant's availability because it notified her of the end of the assignment but she did not request another assignment. The specificity of employer's testimony not only concerning the phone call on June 1, 2020 but also the subsequent dates of attempts to be in contact with claimant far outweigh claimant's inexact testimony about dates, times, and what was said in conversation with Sedona. Benefits are denied.

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

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 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.

(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.

The overpayment issue was addressed. Claimant has received state unemployment benefits in this matter in the amount of \$3,077.00 in regular benefits and \$3,848.00 in PEUC benefits. \$888.00 of the state benefits were received prior to the job separation. The amounts received subsequent to job separation are overpayments.

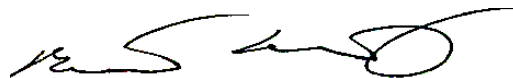
Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter in the amount of \$7,200.00. \$1,800.00 in FPUC benefits were received prior to the claimant's job separation. The amounts received subsequent to job separation are overpayments.

The issue of employer participation was addressed. Employer gave testimony as to their participation and IWD has no documentation that employer did not substantially participate.

DECISION:

The decision of the representative dated September 22, 2020, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant has been overpaid state, PEUC, and FPUC benefits in this matter. This matter is remanded to the benefits bureau to determine the specific amount of overpayments.



Blair A. Bennett
Administrative Law Judge

December 7, 2020
Decision Dated and Mailed

bab/scn