IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHAEL L DELLACA Claimant	**APPEAL 20R-UI-09212-DB-T** **ADMINISTRATIVE LAW JUDGE** **DECISION**
AMERICAN PACKAGING CORP Employer	
	OC: 03/15/20 **Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting for Other Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 29, 2020 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting work without good cause attributable to the employer. An initial appeal hearing was scheduled for March 26, 2020 at 3:00 p.m. The claimant failed to appear and a default decision was issued. The claimant filed an appeal to the Employment Appeal Board and on June 30, 2020, the Employment Appeal Board issued a decision ordering that the matter be set for a new hearing date. The parties were properly notified of the hearing. A telephone hearing was held on September 18, 2020. The claimant, Michael L. Dellaca, participated personally. Attorney Connor Mulholland represented the claimant. The employer, American Packaging Corp., participated through witness Jeff Fuller. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits?
Has the claimant been overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time with this employer as a utility operator beginning November 30, 2017. Claimant believed that his employment would be terminated due to absenteeism related to his medical issues. His employment with this employer ended on March 6, 2020 when he voluntarily quit. Claimant voluntarily quit because he had obtained new employment with Express Services, Inc. which he began working for on March 9, 2020, prior to filing his initial claim for unemployment insurance benefits. Claimant received regular unemployment insurance benefits funded through the State of Iowa and Federal Pandemic Unemployment Compensation benefits after his initial claim on March 15, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(1)a 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:
>
> a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. **Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund**. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(emphasis added).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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).

Iowa Admin. Code r. 871-23.43(5) provides:

> (5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. **No charge shall accrue to the account of the former voluntarily quit employer.**
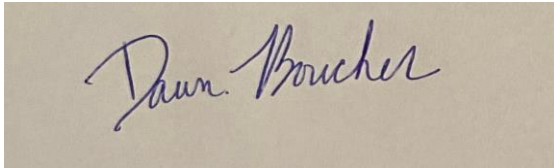
(emphasis added).

In this case, the claimant voluntarily quit by failing to go back to work; however, he had accepted other employment with Express Services Inc. and started that position. As such, the claimant's voluntarily quitting this employer was not disqualifying because he quit for the sole purpose of accepting an offer of other employment.

Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment of benefits and overpayment of Federal Pandemic Unemployment Compensation benefits are

moot. Further, no charges shall accrue to this employer's account pursuant to Iowa Admin. Code r. 871-23.43(5).

DECISION:

The April 29, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant is eligible for benefits effective March 15, 2020, so long as he remains otherwise eligible. His separation from employment with this employer is not disqualifying because he voluntarily quit for the sole purpose of accepting better employment. The claimant is not overpaid regular unemployment insurance benefits funded through the State of Iowa or overpaid FPUC benefits due to this separation from employment with this employer. The employer's account may not be charged for benefits pursuant to Iowa Code § 96.5(1)a as the claimant voluntarily quit for other employment.

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Dawn Boucher
Administrative Law Judge

September 22, 2020
Decision Dated and Mailed

db/scn