

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI S EGLESTON
Claimant

TEMP ASSOCIATES – IOWA INC
Employer

APPEAL 21A-UI-16719-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/26/20
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the April 19, 2021 (reference 04) unemployment insurance decision that allowed benefits to the claimant based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2021. The claimant did not participate. The employer participated through witness Mike Thomas. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?
Has the claimant been overpaid any FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of this temporary employment firm. Her employment began on March 5, 2018 and she was placed at Fisher Controls as a full-time office clerical worker. On January 30, 2020, her assignment with Fisher Controls ended and the employer was attempting to place her on another job assignment. On March 13, 2020, the claimant notified the employer that she was no longer available to accept any additional assignments because she intended to begin a job at a casino.

Claimant's administrative records establish that the claimant reported wages earned for the week-ending March 14, 2020 and March 21, 2020; however, no further wages were reported during the claimant's weekly-continued claim filings through July 11, 2020. Claimant's wage records indicate earnings from Sac & Fox Tribe in the first quarter of 2020, second quarter of 2020, and third quarter of 2020.

A fact-finding interview was conducted by Iowa Workforce Development on April 16, 2021. The employer's witness named Judy participated in the fact-finding interview by telephone and gave the interviewer dates for which the claimant was employed and last worked. Claimant's administrative records indicate that the claimant received regular unemployment insurance benefits in the total amount of \$8,877.00 for the weeks between February 9, 2020 and July 11, 2020. Claimant received regular unemployment insurance benefits of \$7,004.00 for the weeks beginning March 15, 2020 through July 11, 2020 (after her separation from this employer). Claimant's administrative records establish that she received FPUC benefits of \$9,000.00 for the weeks between March 29, 2020 and July 11, 2020 (\$600.00 per week).

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.

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).

In this case, the claimant told the employer that she was no longer going to be working for it. This is a voluntary quitting of work. It is the claimant's burden to establish that her voluntary quitting without good cause attributable to the employer was not disqualifying to her. If she voluntarily quit for the sole purpose of accepting other or better employment, which she did accept and perform services in, then her separation from this employer would not have been disqualifying. However, no credible evidence was presented that could establish that the claimant left employment in good faith and for the sole purpose of accepting other or better employment, and that she performed services in the new employment because the claimant failed to participate in the appeal hearing. As such, the claimant's voluntary quitting of work with this employer on March 13, 2020 was disqualifying and regular unemployment insurance benefits are denied effective March 15, 2020 and continuing until the claimant worked in and

was paid insured wages of at least ten times her weekly-benefit amount, and provided she was otherwise eligible. Because benefits are denied, the issues of overpayment and chargeability must be addressed.

Iowa Code § 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.

Because the claimant's separation on March 13, 2020 was disqualifying, benefits were paid after March 15, 2020 to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7).

In this case, the claimant has received benefits after March 15, 2020 but was not eligible for those benefits. Since the employer did participate in the fact-finding interview by 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 claimant is obligated to repay to the agency the regular unemployment insurance benefits she received after March 15, 2020 in the amount

of \$7,004.00 from March 15, 2020 through July 11, 2020, and this employer's account may not be charged for those benefits paid during that time period.

The next issue is whether the claimant was overpaid FPUC benefits. The administrative law judge finds that she was.

PL 116-136 Section 2104 of the CARES Act created a program in which an additional \$600.00 per week was payable to claimants who were eligible for at least \$1.00 per week in benefits stemming from other programs including regular unemployment insurance funded by the State of Iowa, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, Iowa Extended benefits, and Trade Act benefits. This initial program ran from March 29, 2020 through July 25, 2020. Claimants were only eligible to receive FPUC payments if they were entitled to receive benefits from another applicable program. The payments of FPUC benefits were automatic so long as a claimant was determined to be eligible under one of the other applicable programs. On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 203 reauthorized the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 and modified the weekly supplement payment to \$300.00. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). Section 9103 of ARPA amends Section 2104 of the CARES Act of 2020 and extended the FPUC program for weeks of unemployment ending on or before September 6, 2021. On May 11, 2021, Governor Reynolds announced that Iowa would end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for FPUC benefits in Iowa was the week ending June 12, 2021.

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...

In this case, the claimant was paid FPUC benefits based upon her initial eligibility for regular unemployment insurance benefits. FPUC benefits paid to her began on March 29, 2020 and ended on July 11, 2020. She received FPUC benefits in the total amount of \$9,000.00 (\$600.00 per week). Because the claimant has been determined that she is no longer eligible for regular unemployment insurance benefits effective March 15, 2020 because her separation from employment was disqualifying, she is no longer eligible for those FPUC benefits as well. Therefore, the claimant is overpaid FPUC benefits in the amount of \$9,000.00 for the weeks between March 29, 2020 and July 11, 2020. Those FPUC benefits must be repaid unless a waiver is requested and granted.

Pursuant to PL 116-136 Section 2104(F)(2) of the CARES Act, the claimant may request a waiver of the overpayment of FPUC benefits. The request for waiver should be sent to:

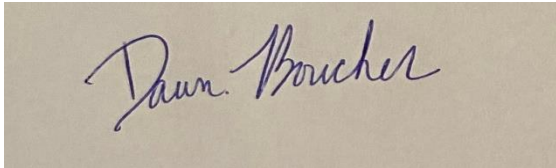
Iowa Workforce Development
Overpayment Waiver Request
1000 East Grand Avenue
Des Moines, Iowa 50319

The request for waiver of overpayment should include the claimant's name, address, decision number and date of decision, dollar amount of overpayment requested for waiver, and all relevant facts the claimant feels would justify a waiver of the overpayment balance. The claimant may also visit <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>.

DECISION:

The April 19, 2021 (reference 04) unemployment insurance decision is reversed. The claimant's separation from employment was disqualifying. Unemployment insurance benefits funded by the State of Iowa are denied effective the benefit week beginning March 15, 2020 and continuing until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after her March 13, 2020 separation date, and provided she is otherwise eligible.

The claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$7,004.00 from March 15, 2020 through July 11, 2020 and is obligated to repay the agency those regular unemployment insurance benefits because the employer did participate in the fact-finding interview. The employer's account may not be charged for those benefits paid between March 15, 2020 and July 11, 2020. The claimant is also overpaid FPUC benefits in the amount of \$9,000.00 for the weeks between March 15, 2020 and July 11, 2020. Those benefits must be repaid to the agency unless a waiver of overpayment is requested and granted.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

September 8, 2021
Decision Dated and Mailed

db/mh

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.