

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLE L PENNY
Claimant

PARCO LTD
Employer

APPEAL 21A-UI-12754-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
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 Sec. 2014 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 17, 2021, Parco LTD (employer/respondent) filed an appeal from the May 14, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on December 1, 2020 because of a change in the contract of hire.

A telephone hearing was held on August 2, 2021. The parties were properly notified of the hearing. Employer participated by HR Rep. Juliet Diaz. Nichole Penny (claimant/respondent) did not register a number for the hearing or participate.

Employer's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was July 6, 2020. Claimant worked for employer as a full-time shift manager. Claimant's immediate supervisor was District Manager Jackie Berens. The last day claimant worked on the job was November 25, 2020. Claimant was unavailable for work from that date and continuing until January 19, 2021, when she resigned. She was unavailable due to childcare and transportation issues. Full-time work was available during that period.

Claimant suffered an injury during her employment and was out of work for an extended period. When she was able to return, her position had been filled. However, she was offered the same position at another location at the same rate of pay, which she accepted.

Claimant filed a claim for benefits each week from the benefit week ending March 20, 2021 and continuing through the benefit week ending June 5, 2021. The unemployment insurance system shows claimant has received regular unemployment insurance in the amount \$329.00 each week during that 10-week period. The total amount of benefits paid is \$3,290.00 during that period. She has also received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$300.00 per week during each of those weeks. The total amount of FPUC paid is \$3,000.00.

There was no formal fact-finding interview or request for information received from the department. Employer is unsure whether there was a cold-call fact-finding interview. The administrative record indicates there was no formal fact-finding scheduled and no cold-call held.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the May 14, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on December 1, 2020 because of a change in the contract of hire is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(17) The claimant left because of lack of child care.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. The evidence indicates claimant resigned due to a lack of childcare and/or transportation. The administrative law judge finds the evidence does not support that claimant resigned due to a change in the contract of hire, as claimant agreed to return to work at a different location in the same position and at the same rate of pay. Benefits are denied from the date of separation.

II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 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 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.

Claimant filed a claim for benefits each week from the benefit week ending March 20, 2021 and continuing through the benefit week ending June 5, 2021. The unemployment insurance system shows claimant has received regular unemployment insurance in the amount \$329.00 each week during that 10-week period. The total amount of benefits paid is \$3,290.00 during that period.

There was no formal fact-finding interview or request for information received from the department. Employer is unsure whether there was a cold-call fact-finding interview. The administrative record indicates there was no formal fact-finding scheduled and no cold-call held.

Because employer did not participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant. However, employer shall not be charged for benefits paid, as the failure to participate was due to no fault of its own. The overpayment shall instead be absorbed by the fund.

III. Is the claimant eligible for federal pandemic unemployment compensation?

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...

Claimant received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$300.00 per week during each of those weeks. The total amount of FPUC paid is \$3,000.00.

Because the claimant was disqualified from receiving regular unemployment insurance (UI) benefits during the period in question, she was ineligible for FPUC during that period. Claimant has therefore been overpaid FPUC in the amount of \$3,000.00.

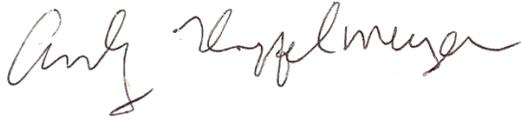
The administrative law judge notes claimant may request a waiver of the FPUC overpayment amount. Further information is set forth below.

DECISION:

The May 14, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant quit work on December 1, 2020 because of a change in the contract of

hire is REVERSED. Claimant is disqualified from benefits from the date of separation and continuing until she earns wages for insured work equal to ten times her weekly benefit amount.

Claimant has been overpaid regular benefits. However, the overpayment shall not be recovered and the employer shall not be charged. The overpayment is charged to the fund. Claimant has been overpaid FPUC in the amount of \$3,000.00. That amount is subject to recovery.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 5, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If this decision determines you have been overpaid FPUC and/or PEUC, you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.