

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEROY WILLIAMS

Claimant

QPS EMPLOYMENT GROUP INC

Employer

APPEAL 20A-UI-10072-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20

Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On August 18, 2020, QPS Employment Group, Inc. (employer/appellant) filed an appeal from the August 14, 2020 (reference 03) unemployment insurance decision that determined Leroy Williams (claimant/respondent) was eligible to receive unemployment insurance benefits. Specifically, the decision found claimant was employed on a temporary basis and worked until April 26, 2020, when his assignment was completed; he had good cause for not notifying employer within three working days of the last assignment; and he did notify the firm at the first reasonable opportunity.

A telephone hearing was held on October 6, 2020. The parties were properly notified of the hearing. Employer was represented by Unemployment Specialist Mai Lor. Unemployment Coordinator Jennifer Yang and Lead Placement Coordinator Melissa Jans participated as witnesses for employer. Claimant did not register a number for the hearing and did not participate.

Employer's Exhibits 1-4 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 worked for employer as a temporary employee. Claimant's first day of employment was January 7, 2019. The last day claimant worked on the job was April 26, 2019. Claimant was assigned to West Liberty Foods at that time. Claimant stopped appearing for work after that date. Employer was able to reach claimant on May 2, 2019, at which time claimant informed employer that he had found work elsewhere. Employer is unsure whether claimant accepted and performed work for another employer.

The unemployment insurance system shows claimant has received benefits in the total amount of \$2,674.17 from the benefit week ending June 20, 2020 and continuing through the benefit week ending October 3, 2020. The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$4,800.00.

Employer received a voicemail from the department at 2:50 p.m. on August 7, 2020, requesting a call back for a fact-finding interview. Employer called back a few minutes later and left a voicemail with essentially the same information as set forth above. See Exhibits 1 and 2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the August 14, 2020 (reference 03) unemployment insurance decision that determined Leroy Williams (claimant/respondent) was eligible to receive unemployment insurance benefits is REVERSED.

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

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.

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).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer. Claimant informed employer that he had found work elsewhere. However, it has not been shown that claimant accepted and performed work for another employer. Benefits must therefore be denied.

- 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.

The unemployment insurance system shows claimant has received benefits in the total amount of \$2,674.17 from the benefit week ending June 20, 2020 and continuing through the benefit week ending October 3, 2020. Because the administrative law judge now finds claimant disqualified from benefits, he has been overpaid benefits in that amount.

The administrative law judge finds employer did participate in the fact-finding process. Employer received a voicemail from the department at 2:50 p.m. on August 7, 2020, requesting a call back for a fact-finding interview. Employer called back a few minutes later and left a voicemail with essentially the same information as set forth above. See Exhibits 1 and 2.

Because employer did participate in the fact-finding process, benefits shall be recovered; 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.

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...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$4,800.00. Claimant is required to repay that amount.

DECISION:

The August 14, 2020 (reference 03) unemployment insurance decision that determined Leroy Williams (claimant/respondent) was eligible to receive unemployment insurance benefits is REVERSED. Claimant voluntarily quit without good cause attributable to employer and is therefore disqualified from benefits. This disqualification shall continue until claimant earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$2,674.17. Because employer did participate in the fact-finding process, benefits shall be recovered; 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.

Claimant has been overpaid FPUC in the amount of \$4,800.00. Claimant is required to repay that amount.



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

October 8, 2020
Decision Dated and Mailed

abd/sam

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are currently 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>.