

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SPENCER T VORE
Claimant

GAMESTOP INC
Employer

APPEAL 20A-UI-04505-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code section 96.3(7) – Overpayment of Benefits
PL116-136, § 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 22, 2020, Spencer Vore (claimant/appellant) filed a timely appeal from the May 21, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on June 9, 2020. The parties were properly notified of the hearing. The claimant participated personally. GameStop Inc. (employer/respondent) did not participate in the hearing.

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?
- 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 part-time as a game advisor. Claimant began employment in November 2017. Claimant last worked for employer in mid to late April 2019. Claimant resigned his employment at that time.

Claimant had plans to start his own, competing business, and was told by employer he would likely be discharged once he took over that business. Claimant decided to pursue self-employment and resign from employer. He gave a couple weeks' notice of resignation at that time. Claimant could have continued employment with employer if he had decided not to pursue

self-employment in a competing business. Claimant's business was subsequently closed for some time due to the pandemic.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$103.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of benefits paid to date is \$618.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of FPUC benefits paid to date is \$3,600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the May 21, 2020 (reference 01) unemployment insurance decision that denied benefits is AFFIRMED.

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.

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:

- (19) The claimant left to enter self-employment.

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.

Claimant essentially resigned to start his own business. Claimant could have continued employment with employer if he had decided not to pursue self-employment in a competing business. Claimant's quitting to enter self-employment was not with good cause attributable to employer. As such, benefits must be denied.

The administrative law judge notes that, while this decision denies regular unemployment benefits, claimant may well be eligible for Pandemic Unemployment Assistance (PUA). Claimant's business was closed for some time due to the pandemic. Information on PUA and how to apply is set forth below.

II. Was the claimant overpaid benefits?

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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$103.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of benefits paid to date is \$618.00.

Because the administrative law judge affirms the decision finding claimant ineligible for benefits, the claimant has been overpaid benefits in the amount of \$618.00. 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...

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of FPUC benefits paid to date is \$3,600.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$3,600.00. Claimant is required to repay those benefits.

DECISION:

The May 21, 2020 (reference 01) unemployment insurance decision that denied benefits is **AFFIRMED**. Claimant is disqualified from receiving benefits until he 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 \$618.00. 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 benefits in the amount of \$3,600.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515) 478-3528

June 24, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.