

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLARISSA Q WASHINGTON
Claimant

IOWA FAMILY SERVICES INC
Employer

APPEAL 20A-UI-05057-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Clarissa Washington (claimant) appealed a representative's May 29, 2020, decision (reference 04) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Iowa Family Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 1, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in the winter of 2018, and at the end of her employment she was working as a full-time respite worker caring for her grandson. The claimant was living in the Marcus, Iowa, area, near Sioux City, Iowa. She was diagnosed with sleep apnea and hypertension. Her doctor said she could not work. On January 26, 2020, she told the employer her last day of work would be February 9, 2020, and she worked through February 9, 2020. On March 31, 2020, she relocated to Chicago, Illinois, so her son could care for her. She has not been released to return to work.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$219.00. The claimant received benefits of \$219.00 per week from March 15, 2020, to the week ending May 23, 2020. This is a

total of \$2,190.00 in state unemployment insurance benefits after the separation from employment. She also received \$4,800.00 in Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1)d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an illness under the advice of her physician. The employer consented to her leaving. The claimant has not provided the employer with certification that she has recovered. In addition, the claimant has not offered her services to the employer. The claimant has not met the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.25(2) provides:

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:

(2) The claimant moved to a different locality.

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). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer she was leaving and quit work. When an employee quits work because she is moving to a different location, her leaving is without good cause attributable to the employer. One of the reasons the claimant left work was because she was moving to Chicago, Illinois. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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.

The claimant received \$2,190.00 per week in unemployment insurance benefits for the ten-week period ending May 23, 2020. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code Section 96.3-7 for that period.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

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

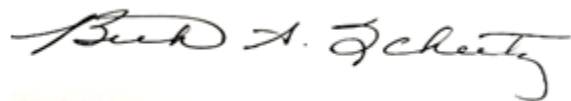
(2) Repayment.-- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

The claimant has been disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$4,800.00 in Federal Pandemic Unemployment Compensation from May 27, 2020. The claimant is required to repay those benefits as well. Because claimant is disqualified from receiving UI, she is also disqualified from receiving FPUC.

DECISION:

The representative's May 29, 2020, decision (reference 04) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The claimant is overpaid unemployment insurance benefits of \$2,190.00 and Federal Pandemic Unemployment Compensation of \$4,800.00.



Beth A. Scheetz
Administrative Law Judge

July 14, 2020
Decision Dated and Mailed

bas/sam