

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARK J SMITH

Claimant

APPEAL NO: 14A-UI-02031-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES RECEIVERSHIP SERVICES

Employer

OC: 01/26/14

Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 13, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualified him to receive benefits. The claimant participated at the March 14 hearing. Matt Esser testified on the claimant's behalf. Amelia Gallagher and Pete Wurzer appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 2013. The employer hired the claimant to work as the general manager at Bennigans. Matt Esser was the general manger of the employer's adjoining hotel and hired the claimant. When Esser worked for the employer, he verified employees' hours and forwarded this information to the employer's accounting firm that prepared payroll checks. After the claimant discovered the employer did not include tips employees earned or withhold any taxes from tips, he questioned Esser. Esser did not know tips should be reflected on an employee's payroll check. None of the employees raised this as an issue to the employer.

The claimant brought the tip issue to J.B.'s attention after Esser left. J.B. indicated this issue would be resolved. When the claimant did not notice any change on any employee's payroll stub, he submitted his resignation on January 6. The clamant indicated he would work until January 23, 2014, (Employer Exhibit Two).

When the claimant resigned, Wurzer had just started working as the employer's general manager. The employer had recently changed accounting firms and checks would reflect employees' tips so the appropriate amount of income tax could be withheld. The claimant quit because he concluded the employer would not change and start reporting tips and would not withhold the correct amount of taxes from employees. The claimant worked until the effective date of resignation, January 23, 2014. Even though the employer asked the claimant to stay and continue to work for the employer, the claimant declined.

The claimant established a claim for benefits during the week of January 26, 2014. He filed claims for the week ending February 1 through March 22. He received his maximum weekly benefit amount of \$351 for each of these weeks. The employer did not personally participate at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

After the claimant started working, he noticed the employer did not report tips employees had received on their payroll checks. This meant the employer did not withhold income taxes based on tips employees received. The claimant has been in the restaurant business a long time and brought the tip issue to Esser's attention. Esser did not realize tips should have been included on the payroll stubs. The claimant brought this omission to other managers' attention also. Even though the employer told him this would be resolved, it was not resolved fast enough for the claimant. After Wurzer became the general manager, Wurzer knew this issue had been resolved. The issue was easily fixed and the employer did business with another accounting firm.

The law presumes a claimant quits with good cause when he leaves because of a substantial change in working conditions or unlawful working conditions. 871 IAC 24.26(1) and (4). The issue regarding the reporting of tips did not personally affect the claimant because he was a salaried employee. Since employees did not bring the tip issue to management's attention, the employer may not have acted as quickly as the claimant wanted to resolve this issue. Even though it took the employer a while to report tips on payroll checks so the proper amount of taxes would be withheld, this issue did not personally affect the claimant.

The claimant established personal reasons for quitting, but he did not establish that he quit for reasons that qualify him to receive benefits. As of January 26, 2014, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, -b.

Based on this decision, the claimant is not qualified to receive benefits as of January 26, 2014. He has been overpaid \$2808 in benefits he received for the weeks ending February 1 through March 22, 2014. The issue of whether the employer participated at the fact-finding interview and whether employer's account will be charged for the overpayment or the claimant 'will be required to pay back the overpayment will be remanded to the Benefits Bureau to determine.

DECISION:

The representative's February 13, 2014 determination (reference 01) is reversed. The claimant voluntarily quit his employment but his reasons for quitting do not qualify him to receive benefits. As of January 26, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant has been overpaid \$2808 in benefits he received for the weeks ending February 1 through March 22, 2014.

The issues of whether the employer satisfied the participation requirements of Iowa Code § 96.3(7) and whether the employer will be charged for the overpayment or the claimant is responsible for paying back the overpayment are **Remanded** to the Benefits Bureau to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs