

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRADY D YEAGER**  
Claimant

**APPEAL NO: 14A-UI-09763-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**P J IOWA LC**  
Employer

**OC: 08/31/14  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 17, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 8, 2014. The claimant participated in the hearing with manager/witness Sami Larson. Jeremy Aneweer, General Manager, and Cayle Campbell, Area Supervisor, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shift leader and delivery driver for Papa Johns from August 6, 2012 to August 27, 2014. He voluntarily quit his job by refusing to continue working August 27, 2014.

The claimant was scheduled to work from 5:00 p.m. to 2:00 a.m. on August 27 and 28, 2014. After the claimant learned he had a dental appointment the following morning and had to leave for Iowa City at 7:00 a.m. he began trying to find a replacement worker to close for him but could not find anyone to do so. He did not want to work because he thought he would be too tired to go to his appointment if he closed and he went out and sat in his car for approximately 20 minutes before Manager Sami Larson went out and talked to him and he came back into the restaurant. He said he was going to quit if he did not find someone to close for him so Ms. Larson called General Manager Jeremy Aneweer and he came in on his day off to inquire with the claimant about what was going on. Mr. Aneweer talked to the claimant in the office privately and the claimant said he wanted to demote himself from the shift leader position and just work as a driver. Mr. Aneweer told the claimant he would be considered to have voluntarily quit his job if he did not work his shift. He was working as a shift leader August 27, 2014. Mr. Aneweer then left to go home and get his work clothes and returned to relieve the claimant.

The claimant had also called Area Supervisor Cayle Campbell and told him about his dental appointment and stated he could not close. Mr. Campbell said he could leave if he found a replacement and Mr. Campbell attempted to find a manager to close for him but no one would because they had covered for the claimant on many other occasions. The claimant did find one employee who agreed to work for him but she called Mr. Aneweer after speaking to the claimant and said she felt pressured by the claimant to work for him and did not actually want to work for him so Mr. Aneweer told her not to work for him.

When Mr. Aneweer went back to the restaurant the claimant said he wanted to make it clear he was not quitting his job and Mr. Aneweer told him by refusing to work his shift he was abandoning his job. The claimant was "hanging around" talking to other employees and Mr. Aneweer told him to leave because he was not working.

On August 28, 2014 Mr. Campbell called the claimant because there was a rumor going around that the claimant was still working for the employer as a delivery driver. Mr. Campbell told the claimant if he quit one of his positions he quit both positions.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1290 since his separation from this employer.

The employer did not participate in the fact-finding interview or submit any documentation to the fact-finder.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant chose to walk off his job August 27, 2014 without securing a replacement because he did not want to close that night after finding out he had an early dental appointment the following morning. While it may have been inconvenient for the claimant to have an early dental appointment after closing the restaurant the night before, everyone has commitments that might result in more fatigue than they would like but as an employee and an adult the commitments must be kept as, in this case, there were other people, employees, and managers that were depending on him to work his assigned schedule.

After the claimant stated he was quitting if he did not find a replacement to close for him, he went out and sat in his car until Ms. Larson went out to confront him and he reluctantly returned. After Ms. Larson contacted Mr. Aneweer on his day off; Mr. Aneweer came in, met with the claimant, and told him that if he left the employment it would be considered job abandonment. Even with that information the claimant chose to leave his shift and Mr. Aneweer was forced to work for him.

The claimant argues he did not intend to quit his job but instead wanted to “demote” himself from his shift leader position and remain as a delivery driver. Even if the employer was willing to allow him to do that, the claimant cannot simply determine he was demoting himself in the middle of a shift and leave. If he walked off his shift and abandoned his job, it would be delusional to believe the employer would let him keep his job as a delivery driver.

Under these circumstances, the administrative law judge concludes the claimant voluntarily quit his job by walking off in the middle of his shift and he has not demonstrated that his leaving was for unlawful, intolerable, or detrimental working conditions as required by Iowa law. Therefore, benefits are denied.

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 un rebutted 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.

(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer’s representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. There is no evidence the claimant received benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact-finding interview personally or through any documents. Consequently, the claimant's overpayment of benefits must be waived and the benefits he has received to date, in the amount of \$1290, will be charged to the account of the employer.

**DECISION:**

The September 17, 2014, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. Because the employer did not participate in the fact-finding interview, the repayment of those benefits in the amount of \$1290 to date is waived and will be charged to the employer's account.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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