

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD E EWINGS**  
Claimant

**APPEAL NO. 09A-UI-09755-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAHARISHI UNIVERSITY OF  
MANAGEMENT**  
Employer

**OC: 05/17/09**  
**Claimant: Respondent (2-R)**

Section 96.5(1)I – Quit/New Employer

**STATEMENT OF THE CASE:**

The employer, Maharishi University of Management (MUM), filed an appeal from a decision dated June 30, 2009, reference 01. The decision allowed benefits to the claimant, Donald Ewings. After due notice was issued, a hearing was held by telephone conference call on August 10, 2009. The claimant participated on his own behalf. The employer participated by Human Resources Stan Lamothe, Director of Physical Plant Craig Wagner, Administrative Director David Streid, and Former Director of Physical Plant Dearmond Briggs. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Donald Ewings was employed by MUM from March 26, 2007 until May 12, 2009 as a full-time carpenter. The staff was notified Aramark was going to be taking over the physical plant as of June 1, 2009. All current employees were offered jobs with the new company at the same hours, wages and duties, contingent only upon successfully passing the physical, drug test and background check.

The claimant did not want to work for Aramark and refused to apply or interview. He did meet with the former Director of Physical Plant Dearmond Briggs, Human Resources Director Stan Lamothe, and Administrative Director David Streid, on separate occasions. Each of them assured him he would be hired with Aramark at the same hours, wages and duties as he had with MUM. He refused to apply or interview with Aramark. Part of his reasons was that he would no longer have a partner and he enjoyed working with his current partner. He also was not "impressed" with Aramark as a company.

Donald Ewing has received unemployment benefits since filing a claim with an effective date of May 17, 2009.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-i 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. But the individual shall not be disqualified if the department finds that:

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did transfer the operation of the physical plant to a new company. The new company offered employment to all the staff, which the claimant refused. His only reason was that he was "not impressed" with Aramark. He had many misconceptions such as whether he would be able to continue working with his partner and have to use his own vehicle. He made no attempt to attend one of the interviews and have these questions answered by the Aramark representative. His refusal to continue working is considered as voluntary quit without good cause attributable to the employer. He is disqualified.

Iowa Code section 96.3-7, 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.

b. (1) 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. 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. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of June 30, 2009, reference 01, is reversed. Donald Ewings is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css