

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT L WORTHON**  
Claimant

**APPEAL NO. 09A-UI-00337-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/19/08 R: 04**  
**Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 30, 2008, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 22, 2009. The parties were properly notified about the hearing. The claimant had sent a letter requesting a postponement of the hearing based on requesting a subpoena. The letter was sent to the Employment Appeal Board and refers to subpoenaing information for a totally different appeal pending before the Employment Appeal Board in Appeal 08B-UI-12144 with another employer, West Liberty. I called the claimant on the morning of the hearing and informed him that I was not granting a postponement and expected him to be available for the hearing. The claimant had provided a telephone number to call for the hearing but was not available at that number at the time of the hearing. As a result, the claimant failed to participate in the hearing. Kris Travis participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a maintenance mechanic from April 29, 2008, to August 22, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were considered to have abandoned their jobs after five days of absence without notice to the employer.

The claimant called in sick from August 25 through August 29, 2008. He was scheduled to work on September 4, 5, 6, 7 and 9. He was absent without notice to the employer on each of these days, so the employer considered the claimant to have abandoned his job. He never contacted anyone in management about his employment status after August 29.

The claimant filed for and received a total of \$2,097.42 in unemployment insurance benefits for the weeks between October 19 and December 27, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 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.

The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). Under the facts of this case, the claimant is deemed to have voluntarily quit employment without good cause attributable to the employer because he was absent without notice to the employer starting September 4 and he never contacted the employer again.

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

The unemployment insurance law requires benefits to 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated December 30, 2008, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is

otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs