

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN D UMBGAUGH
Claimant

APPEAL NO. 09A-UI-01414-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 11/23/08 R: 02
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 January 22, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 18, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Tony Luse participated in the hearing on behalf of the employer.

ISSUE:

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 mechanic from August 8, 2007, to October 23, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer one hour before the start of their shift if they were not able to work as scheduled and were considered to have voluntarily quit employment after three days of unreported absence. Under the employer's attendance policy, employees are given points for unscheduled absence and tardiness and are subject to being discharged after accumulating ten points. Under proper circumstances, employees who have ten points are allowed to continue in employment under a last-chance agreement.

The claimant left work early on October 23 and was called in sick the remainder of the week. He was depressed and under treatment for depression after his wife left him with their three young daughters. He was prescribed medication for his condition.

The claimant was on approved vacation from November 3 to 8. He was sick and unable to work due to his depression and the effects of the medications he was taking for his condition on November 9, 10, and 11. He called in properly each day.

The claimant was ill after November 11, but he did not report to work or call in on November 12, 13, and 14. He did not contact anyone in management afterward because he assumed he had exceeded the point total under the employer's absenteeism policy. In fact, the employer would have treated his extended absence as one point if he had provided a medical excuse for his absences and would have given him a last-chance agreement that would have allowed him to continue in employment despite the fact that he had exceeded the ten points allowed under the attendance policy. No one in management ever informed the claimant that he was discharged.

The claimant filed for and received a total of \$3,272.00 in unemployment insurance benefits for the weeks between November 23, 2008, and February 14, 2009.

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 § 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).

The claimant voluntarily quit employment after he stopped reporting to work and stopped calling in to report his absence. He quit because he assumed he had been discharged. No one in management informed the claimant that he was discharged. In fact, it is likely the employer would have allowed him to continue to work even though he had exceeded the ten points allowed under the attendance policy. He jumped the gun by quitting before he was informed that he was discharged. No good cause for quitting has been shown.

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 § 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 § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 22, 2009, reference 01, 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 § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css