

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D CARTER
Claimant

APPEAL NO. 12A-UI-12945-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 10/07/12
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from an unemployment insurance decision dated October 25, 2012, reference 01, that allowed benefits to Larry D. Carter. After due notice was issued, a telephone hearing was held November 26, 2012 with Mr. Carter participating. Exhibit A was admitted into evidence on his behalf. Loss Prevention Specialist Michael Payne participated for the employer. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Larry D. Carter was employed by Advance Services, Inc. on assignment from February 1, 2012 through May 10, 2012. Mr. Carter notified the employer on May 14, 2012 that he would not be able to work due to a medical condition. He brought documentation to the employer on several occasions. On May 18, 2012 he provided documentation that he would be able to return to work on May 21, 2012 after re-evaluation. He did not return to work or contact the employer until May 29, 2012. His former assignment was no longer available. He told the employer that he would be in contact with them again in the fall. The claimant has received unemployment insurance benefits since filing a claim effective October 7, 2012.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does not.

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.

After providing the employer with documentation that he could return to work on or about May 21, Mr. Carter did not contact the employer until May 29. At that time he said that he would seek another assignment in the fall. The administrative law judge concludes that Mr. Carter abandoned his employment by failing to keep in contact with the employer during his convalescence. He also concludes that Mr. Carter did not genuinely seek re-employment when making contact on May 29. Benefits are withheld.

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 question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated October 25, 2012, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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