

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARIAN BANKS
Claimant

APPEAL NO. 09A-UI-05075-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AMERICAN BUILDING MAINTENANCE CO
OF KENTUCKY INC**
Employer

OC: 02/22/09
Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Absent Three Days Without Giving Notice
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2009, reference 01, decision that allowed benefits without disqualification. After due notice, a hearing was scheduled for and held on April 28, 2009. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Mr. Tom Linquist, Hearing Representative and witness, Ken Hampton, Supervisor.

ISSUES:

The issues are whether the claimant voluntarily quit employment by failing to report or provide notification for three or more consecutive workdays and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness and having considered all of the evidence in the record, finds: The claimant was employed as a recycling worker for American Building Maintenance from November 7, 2008 until January 22, 2009 when he voluntarily quit employment by discontinuing to report for scheduled work. Mr. Banks was employed on a full-time basis and was paid by the hour. His immediate supervisor was Ken Hampton.

The claimant was separated from employment after he failed to report for work and failed to provide any notification to the employer on January 20, 21 and 22, 2009. The claimant was aware of the company's attendance policy and the requirement that he call in to report impending absences. The claimant was aware that if he failed to report or provide notification for three consecutive workdays he would be considered to have voluntarily left employment. Mr. Banks subsequently indicated to the company that he had failed to call in because he was in the hospital and his "phone was broken."

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant quit employment by failing to report or provide notification for three or more consecutive workdays. It does.

The evidence in this case establishes that the claimant did not call in to report his impending absences on January 20, 21 or 22, 2009 although he was aware of the company rule that required him to provide daily notification. The claimant subsequently indicated that he had not called in each day because his "phone was broken." The evidence in the record establishes that other methods of communication were potentially available to the claimant but he did not utilize them. The administrative law judge thus concludes that the claimant voluntarily quit employment for reasons not 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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.

DECISION:

The representative's decision dated March 18, 2009, reference 01, is reversed. Arian Banks is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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