

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER DEETZ**  
Claimant

**APPEAL NO. 12A-UI-07699-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 5/22/12  
Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated June 19, 2012, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 16, 2012. Employer participated by Jody Korleski, Staffing Consultant. Claimant failed to respond to the hearing notice and did not participate. No exhibits were admitted into evidence.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The employer is a staffing agency which makes staffing assignments to employer customers. Claimant was assigned to a few different staffing assignments over time. Claimant last worked for employer on May 4, 2012. He was assigned to work at Graham Manufacturing on May 2, 2012. He called in and quit shortly after beginning due to the length of the commute. He quit his prior assignment at Winnebago because of the long shifts.

**REASONING AND CONCLUSIONS OF LAW:**

The initial question raised in this case is the nature of the separation. Separations are categorized into four separate categories under Iowa law.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices,

plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

See Iowa Administrative Code 871—24.1.

The nature of a separation is generally determined by ascertaining which party initiated the separation. If the employer initiated the separation, with intent to permanently sever the employment relationship, then the separation is generally considered a termination or layoff. If the claimant initiated the separation, with intent to permanently sever the employment relationship, then the separation is generally considered a voluntary quit.

It is the employer's burden to prove the nature of the separation. This is often extremely significant in many cases because the burden generally rests with the party who initiated the separation. If the employer initiated the separation, the employer then must prove misconduct (or another basis for disqualification). If the claimant initiated the separation, then the claimant must prove good cause attributable to the employer.

The claimant did not participate in the hearing. The employer testified under oath that the claimant quit his last two jobs through Express Services. He was assigned to Winnebago from February 22, 2012 to April 27, 2012. He quit that position due to the length of shifts. He was then assigned to Graham Manufacturing from May 2, to May 4, 2012. He called the employer and stated it was too far to drive and quit that job as well.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because the job was too far to drive.

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.

Iowa Administrative Code 871 section 24.25(30) provides guidance. A worker does not quit with good cause when she or he "left due to the commuting distance to the job; however the claimant was aware of the commuting distance when hired." Id.

The next issue concerns an overpayment of unemployment insurance benefits.

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.

This matter is remanded to the Claims Section for determination of an overpayment.

**DECISION:**

The decision of the representative dated June 19, 2012, reference 02, is reversed and remanded for determination of overpayment. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css

