

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR X CLEVELAND
Claimant

APPEAL NO. 13A-UI-06186-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM LTD
Employer

OC: 05/05/13
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, ABM Ltd., filed an appeal from a decision dated May 22, 2013, reference 01. The decision allowed benefits to the claimant, Arthur Cleveland. After due notice was issued, a hearing was held by telephone conference call on July 1, 2013.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 1:00 p.m. The claimant was not present at the number. A message was left with Phyllis indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 1:13 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Human Resources Manager Gregg Stearns, Vice President of Operations Donarene Grenell and Daytime Operations Manager Javier Paz.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Arthur Cleveland was employed by ABM from August 16, 2010 until May 9, 2013 as a full-time janitor. The employer met with him on May 2, 2013, to discuss a complaint from the customer where Mr. Cleveland worked. Several female employees at that location indicated they found Mr. Cleveland's conduct troubling. He spent too much time engaging them in conversation and being "too close" while they were working or when he was trying to talk to them. The customer had asked him to be removed from its location.

The employer offered the claimant a new assignment with different hours to begin May 3, 2013. He initially agreed to start on May 6, 2013. He did not report for work as agreed on May 6, 7, 8, or 9, 2013, and did not call in on any of those days.

The company handbook specifies three day no-call/no-show to work is considered a voluntary quit. ABM considered him to have quit May 9, 2013.

Arthur Cleveland has received unemployment benefits since filing a claim with an effective date of May 5, 2013.

The record was closed at 1:13 p.m. on Monday, July 1, 2013. At 8:31 a.m. on Tuesday, July 2, 2013, the claimant called in response to the message left for him the day before. The claimant received the hearing notice prior to the July 1, 2013 hearing. The claimant stated he forgot the time and date of the hearing and was not at the phone number he provided to accept the judge's call.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant did agree to accept the new assignment but then declined to show up for work or call in for three days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant did receive the notice of hearing and responded to the Appeal Section as required to provide a phone number. But he forgot the time and date the hearing was scheduled and was not available. This does not constitute good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of May 22, 2013, reference 01, is reversed. Arthur Cleveland is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css