

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE L BAHRENFUSS
Claimant

APPEAL NO. 07A-UI-07857-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

**OC: 07/08/07 R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 9, 2007, reference 05, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on August 30, 2007. Claimant did not participate. Employer participated through Judy Callahan. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer and if so, whether he is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time production worker from January 29, 2007 until March 1, 2007 when he quit. His last day of work was February 5 and he was a no-call/no-show on February 13, 14, 16, 21, 22, 23, 26, 27, 28 and March 1, 2007. Callahan verbally warned him to call to report absences or his status each day on February 6, 12, 15, and 19, 2007.

The claimant has received unemployment benefits since filing a claim with an effective date of July 8, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left 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.

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 § 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 § 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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 9, 2007, reference 05, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such

time as his has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,248.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css