

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN J NALL**

Claimant

**APPEAL NO: 20A-UI-04896-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALTER TRADING CORPORATION**

Employer

**OC: 04/12/20**

**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 19, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on June 24, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Jay Clarhout, Yard Supervisor; Jason Weiland, Facility Manager; and Tim Speir, Employer Representative participated in the hearing on behalf of the employer.

**ISSUE:**

The issues are whether the claimant voluntarily left his employment with good cause attributable to the employer and whether he is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time crane operator for Alter Trading Corporation from January 16, 2018 to April 9, 2020. He voluntarily left his employment following a reprimand April 9, 2020.

On Thursday, April 9, 2020, the employer called the claimant to the office around 8:00 a.m. or 9:00 a.m. to discuss his no/call no/show absences and issue him a written warning. Under the employer's policy, if an employee is going to be absent he must notify the employer two hours before the start of his shift. The claimant failed to do so on at least four occasions and consequently the employer was giving the claimant a written warning. When the employer told the claimant it was going to issue him a written warning the claimant became angry and said, "Fuck this place," got up and left the premises despite being scheduled to work until 4:30 p.m. He did not call the employer or return to work that day and the employer determined he voluntarily quit his job.

The claimant's day off was Friday. On Monday, April 13, 2020, the claimant reported for work on time and the employer brought him to the office and asked why he was there and the

claimant said he was there to work. The employer said it considered his actions April 9, 2020, to be a voluntary leaving of his employment. The claimant became very agitated and said he was not quitting and the employer would need to terminate his employment. The employer told him he quit by walking out. The employer never told the claimant his employment was terminated.

The claimant has claimed and received regular unemployment insurance benefits in the amount of \$4,810.00 for the ten weeks ending June 20, 2020. He also received Federal Pandemic Unemployment Compensation in the amount of \$6,000.00 for the ten weeks ending June 17, 2020.

The employer did not receive notice of the fact-finding interview and did not participate in the fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Admin. Code r 871-24.25(28) 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. 871 IAC 24.25. 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:

(28) The claimant left after being reprimanded.

The claimant became upset and quit his employment by saying, "Fuck this place," and walking off the job after being reprimanded for failing to call the employer at least two hours before the start of his shift on four recent occasions. The claimant's actions constitute a voluntary leaving of employment without good cause attributable to the employer. Therefore, benefits are denied.

The next issue in this case is whether the claimant/appellant was overpaid unemployment insurance benefits.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

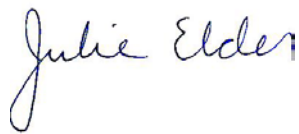
The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The law also states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating tot the payment of benefits..." Iowa Code section 96.3(7)(b)(1)(a). Here, the employer did not receive the notice of fact-finding and consequently was unaware it was taking place until it received the representative's decision. Benefits were paid, but not because the employer failed to respond timely or adequately to the agency's request for information relating to the payment of benefits. Instead, benefits were paid because the employer did not receive the notice of fact-finding interview. The employer thus cannot be charged for the claimant's benefits. Since neither party is to be charged, the overpayment is absorbed by the Unemployment Compensation Fund.

**DECISION:**

The May 19, 2020, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he 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 has received regular benefits in the amount of \$4,810.00 for the ten weeks ending June 20, 2020, but is not obligated to repay those benefits to the agency. The employer did not participate in the fact-finding interview due to no fault of its own and its account shall not be charged. Instead, the overpayment shall be charged to the Unemployment Compensation Fund.



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Julie Elder  
Administrative Law Judge

July 1, 2020  
Decision Dated and Mailed

je/scn