

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY R SHAFER
Claimant

APPEAL NO: 15A-UI-00031-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIRACLE MUSCATINE INC
Employer

OC: 12/07/14
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 24, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation occurred for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate at the January 27 hearing. Mellissa Calliger, the officer manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

If the claimant has been overpaid, is he required to pay back the overpayment or will the employer's account be charged?

FINDINGS OF FACT:

The employer hired the claimant to work at the car wash in March 2014. The claimant worked 20 to 30 or more hours a week. The employer requires employees to call each day about working unless the employer knew the night before the weather was going to be all right the next day.

The employer gave the claimant a written warning for failing to call or report to work on August 30 and 31. The claimant worked on December 1. On December 2 he did not call or report to work. On December 3 the claimant called to find out if the employer wanted him to work. The employer did not need him on December 3 but Calliger told the claimant he would receive a warning for failing to call or report to work the day before. She reminded him that he was required to report to work and/or call every day. During this conversation, the claimant told Calliger that he did not quit.

The claimant did not call or report to work until December 12. On December 12 he came to pick up his paycheck. Calliger told the claimant he needed to talk to the manager before he could return to work. The claimant was a hard worker and the employer was busy and had work for the claimant to do. The claimant did not believe it would do him good to talk to the manager and did not. The claimant did not return to work. When the claimant did not talk to the manager, and did not call or return to work after December 12, the employer no longer considered him an employee as of December 15.

The claimant established a claim for benefits during the week of December 7, 2014. His maximum weekly benefit amount is \$140. He filed claims for the weeks ending December 13 through January 17, 2015. He received his maximum weekly benefit amount for each of these weeks. The employer participated at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence establishes the claimant voluntarily quit his employment when he did not return to work on December 3 and declined the opportunity to take to the manager on December 12, 2014. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The claimant may have had compelling reasons for failing to return to work or to talk to the manager, but the evidence does not establish that he quit for reasons that qualify him to receive benefits. As of December 7, 2014 the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not legally entitled to receive benefits for the weeks ending December 13, 2014, through January 31, 2015. He has been overpaid \$1120 in benefits for these weeks.

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 § 96.3(7)a, b.

The employer participated at the fact-finding hearing. As a result, the claimant is legally responsible for paying back the \$1120 overpayment.

DECISION:

The representative's December 24, 2014 (reference 01) determination is reversed. The claimant voluntarily quit this employment for reasons that do not qualify him to receive benefits. As of December 7, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid \$1120 in benefits he received for the weeks ending December 13, 2014, through January 31, 2015. The claimant is responsible for paying back this overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can