

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY C BOOKER
Claimant

APPEAL NO. 09A-UI-15912-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASPEN ATHLETIC CLUBS LLC
Employer

**Original Claim: 10/04/09
Claimant: Appellant (3)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Timothy Booker filed a timely appeal from a representative's decision dated October 15, 2009, reference 02, which found the claimant voluntarily quit part-time work on August 10, 2009, but held the claimant eligible to receive unemployment insurance benefits based upon wages earned from other employers in his base period. After due notice was issued, a telephone hearing was scheduled for and held on November 23, 2009. Although duly notified, the claimant did not respond to the notice of hearing and did not participate in the hearing. The employer participated by Ms. Shana Michael, vice president of operations.

ISSUE:

At issue is whether the claimant voluntarily quit full-time employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Timothy Booker was employed as a full-time personal trainer for Aspen Athletic Clubs LLC from June 1, 2009, until approximately August 10, 2009, when the employer determined that he had voluntarily quit employment by discontinuing to report for scheduled work. Mr. Booker was paid by the hour. His immediate supervisor was Laura Brammeier.

Mr. Booker last reported for scheduled work on July 29, 2009. Although Mr. Booker continued to be scheduled, he did not report for further work or report his impending absences to his employer. After the claimant had failed to report or provide notification for three or more scheduled workdays, the employer reasonably concluded the claimant had chosen to voluntarily quit his employment. Work continued to be available to Mr. Booker at the time that he chose to leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant voluntarily quit full-time employment without good cause attributable to the employer.

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.

The evidence in the record establishes that Mr. Booker was employed as a full-time personal trainer for Aspen Athletic Clubs LLC and that the claimant's employment came to an end when Mr. Booker chose to discontinue reporting for scheduled work for three or more consecutive workdays without providing notification to the employer. Although work continued to be available to the claimant, Mr. Booker, for his own reasons, discontinued reporting for work. The employer has had no further contact with Mr. Booker after the claimant chose to leave employment.

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.

Based upon the facts of the case and the application of the law, the administrative law judge concludes that the claimant voluntarily quit full-time work without good cause attributable to the employer. Benefits are withheld.

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 issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated October 15, 2009, reference 02, is affirmed as modified. The claimant voluntarily quit full-time work without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw