

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A NOACK
Claimant

APPEAL NO. 07A-UI-06643-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OFFICE DEPOT INC
Employer

OC: 06/03/07 R: 02
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 21, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 23, 2007. The parties were properly notified about the hearing. The claimant called and provided a telephone number for the hearing, but he was not available at that number at the time of the hearing and did not return the message left for him on voice mail. Ed Meyers participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a customer service associate from October 23, 2006, to May 15, 2007. He was scheduled to work about 32 hours per week. Ed Meyers is the assistant store manager. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after two days of absence without notifying the employer.

On May 15, 2007, the claimant was on the phone talking to someone while he was checking out customers at the register about an hour after his work shift started. Meyers became concerned because he knew Office Depot was having a mystery shopper week where Office Depot sends customers into the store to evaluate customer service. Meyers approached the claimant and asked who he was talking with on the phone. The claimant admitted it was a personal call. Meyers requested that the claimant stop having personal calls while he was checking out customers.

The claimant became upset and told Meyers to back off because he was just trying to arrange transportation with his wife. He commented that he should just clock out and go home. Meyer

told the claimant that he should calm down and if he left work, he would be considered to have resigned. The claimant then left work, and as he was walking out, he told Meyers that he could take the job and stick it up his ass.

The claimant was scheduled to work on May 16, 19, and some days during the week of May 20. He did not report to work again or have any communication with store management after May 15. The employer considered him to have voluntarily quit employment.

The claimant filed for and received a total of \$1,266.00 in unemployment insurance benefits for the weeks between June 3 and July 21, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer. Telling someone that he will be considered to have resigned if he walks off the job before the end of his shift is not a discharge. Meyers did not say he was discharged. The claimant voluntarily quit employment because he left work on May 15 and never returned.

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.

Apparently the claimant quit his job because he was upset about Meyer telling him not to make personal calls while working. Obviously this would not provide good cause to quit employment attributable to the employer because the claimant's conduct was clearly unprofessional and ignored the employer's interest in providing good customer service.

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

Iowa Code section 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,266.00 in benefits.

DECISION:

The unemployment insurance decision dated June 21, 2007, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,266.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs