

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R BOWDRY
Claimant

APPEAL NO. 13A-UI-09598-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STEAK-N-SHAKE INC
Employer

OC: 06/30/13
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 12, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 24, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. As shown on the APLT screen (Exhibit 1), there is no telephone number listed for the claimant. This proves he failed to provide a telephone number at which he could be reached for the hearing because this is the log where phone numbers for the parties are entered. Bob Specht 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 full time for the employer as crewmember about 35 hours or more per week from August 2012 to June 29, 2013.

The claimant called the general manager on June 29, 2013, and said he was going to be late for work because he had to assemble himself. The manager told the claimant that he could report to work at 6 p.m., instead of his scheduled time of 5 p.m.

The claimant reported to work at 6 p.m., walked around the restaurant, and then walked out of the restaurant without talking to the manager. He had scheduled days of work after June 29, but he never reported to work. He never contacted anyone with management with the employer again and was considered to have abandoned his job.

The claimant filed for and received a total of \$1,360 in unemployment insurance benefits for the weeks between July 28 and September 21, 2013.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1 and 96.5-2-a. The evidence establishes the claimant voluntarily left employment without good cause attributable to the employer by walking out on a scheduled day of work and never returning to work.

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 will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant was overpaid \$1,360 in unemployment insurance benefits he received following his separation from employment.

The matter of deciding whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency since the store manager was not aware of what happened regarding the fact-finding interview.

DECISION:

The unemployment insurance decision dated August 12, 2013, 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 \$1,360 in unemployment insurance benefits. The matter of deciding whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs