

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ERIK T THOMPSON**  
Claimant

**PLUMROSE USA INC**  
Employer

**APPEAL NO. 22A-UI-04036-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/02/22**  
**Claimant: Respondent (2)**

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Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On January 31, 2022, the employer filed a timely appeal from the January 19, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 10, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on March 16, 2022. The claimant did not comply with the hearing notice instructions to call the designated number at the time of the hearing and did not participate. Jessica Rios represented the employer. The administrative law judge took official notice of the following Agency administrative records: DBRO, KFFV, the SIDES protest. The fact-finding materials were not available at the time of the hearing, but became available immediately thereafter. The administrative law judge hereby takes official notice of the fact-finding record for the limited purpose of determining whether the employer participated within the meaning of the law and, if not, whether the claimant engaged in fraud or intentional misrepresentation.

**ISSUES:**

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntary quit without good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Erik Thompson, was employed by Plumrose U.S.A., Inc. as a full-time maintenance technician. The claimant began the employment in December 2019 and last performed work for the employer on Saturday, November 13, 2021. The claimant was assigned to the second shift. The claimant's shift would start at 3:30 p.m. and would end at about 1:20 a.m. The claimant usually worked Tuesday through Saturday. Darin Smith, Maintenance Manager, was the claimant's supervisor.

After the claimant completed his November 13, 2021 shift, he was next scheduled to work on Tuesday, November 16, 2021. The claimant called in absences on November 16 and 17, 2021 via the employer's automated absence reporting number. The system does not allow employees to provide a reason for an absence, just whether the employee will be absent or late. The claimant's supervisor subsequently notified the employer's human resources personnel that the absences were related to the claimant's father being ill and in the hospital. After November 17, 2021, the claimant did not return to work and did not use the automated absence reporting system to give notice of additional absences.

Soon after the absences on November 16 and 17, Calee Scott, Human Resources Manager contacted Darin Smith, Maintenance Manager, to express concern about the claimant having a high number of attendance points. Mr. Smith told Ms. Scott that the claimant needed leave under the Family and Medical Leave Act (FMLA). Mr. Smith would not have the authority to approve a leave of absence. Ms. Scott directed human resources personnel to send FMLA paperwork. The human resources personnel made telephone calls to the claimant and left messages for the claimant, but the claimant did not answer the call or respond to the messages. The human resources personnel wanted the claimant to provide a fax number at the hospital to which the employer could direct FMLA paperwork. The employer elected not to send the FMLA paperwork directly to the claimant.

When the employer had not heard from the claimant by December 16, 2021, the employer documented the claimant's separation from the employment.

The claimant established an original claim for benefits that was effective January 2, 2022. Iowa Workforce Development set the weekly benefit amount at \$531.00. The claimant received \$2,124.00 in benefits for four weeks between January 2, 2022 and January 29, 2022.

On January 18, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's separation from the employment. The claimant participated in the fact-finding interview and provided a verbal statement that did not include fraud or intention misrepresentation. No one from Plumrose USA, Inc. participated in the fact-finding interview. Instead, Alice Noble, an Equifax Unemployment Insurance Claims (UIC) Specialist with no personal knowledge of the claimant's employment or separation from the employment appeared on the employer's behalf. Ms. Noble told the IWD deputy, "He was discharged and it was considered a voluntary quit due to a three-day no-call/no-show. I do not have the dates for the no-call/no-show. I don't have any other information to provide at this time." The employer had not submitted any documentation for the fact-finding interview beyond the cursory protest Equifax filed via SIDES, which stated: "The claimant was considered to have voluntarily quit after failing to call or report for three scheduled days of unreported absences."

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

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

The evidence in the record establishes a voluntary quit, rather than a discharge from the employment. The claimant voluntarily went off work. The claimant called in absences for two days. The claimant then discontinued contact with the employer. This included not answering the employer's calls and not responding to messages from the employer. The employer had not told the claimant he could not return to the employment. The employer waited almost a month after the claimant absented himself from the employment and from contact before the employer documented a separation from the employment. The employer reasonably concluded the claimant had voluntarily quit the employment. The evidence establishes a voluntary quit effective November 17, 2021, rather than on the later date of December 10, 2021.

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.

The evidence in the record indicates a voluntary quit that was without good cause attributable to the employer. The claimant did not appear for the hearing and did not present any evidence to indicate an involuntary separation from the employment or that the claimant quit for a reason that would not disqualify the claimant for unemployment insurance benefits. The evidence in the record establishes a voluntary quit for personal reasons and without good cause attributable to the employer. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning January 30, 2022.

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) and (b).

The claimant received \$2,124.00 in benefits for the four weeks between January 2, 2022 and January 29, 2022. Because this decision disqualifies the claimant for benefits, the benefits the claimant received are an overpayment of benefits. The claimant did not receive benefits due to fraud or willful misrepresentation. This base period employer did not participate in the fact-finding interview within the meaning of the law.

Iowa Administrative Code rule 871-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(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 unrebutted 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.

The mere presence of the Equifax representative at the fact-finding interview did not satisfy the participation requirement. That person had no personal knowledge concerning the claimant's employment and specifically advised the deputy she could not provide any details regarding the claimant's separation. The SIDES protest was equally scarce. Because the claimant did not receive benefits due to fraud or willful misrepresentation and because employer failed to participate in the fact-finding interview within the meaning of the law, the claimant is not required to repay the overpaid benefits. The employer's account may be charged for the \$2,124.00 in overpaid benefits.

**DECISION:**

The January 19, 2022 (reference 01) decision is REVERSED. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective November 17, 2020. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning January 30, 2022. The claimant was overpaid \$2,124.00 in benefits for four weeks between January 2, 2022 and January 29, 2022. The claimant is not required to repay the overpaid benefits. The overpaid benefits shall be assessed to the employer's account.



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James E. Timberland  
Administrative Law Judge

March 29, 2022  
Decision Dated and Mailed

jet/scn