

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL N JONES**  
Claimant

**APPEAL NO. 08A-UI-11385-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 11/09/08 R: 03**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated November 26, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on December 17, 2008. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Ms. Gwen Timmerman. Employer's Exhibit One was received into evidence.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 3, 2008, until October 8, 2008. Mr. Jones worked as a full-time production worker and was paid by the hour.

The claimant was separated from his employment after he failed to report for scheduled work and did not provide notification to the employer for three or more consecutive workdays beginning September 30, 2008. The claimant was aware of the company policy that required employees to call in to report impending absences each day. After the claimant had failed to report or to provide any notification for three or more consecutive workdays, he was removed from company employment roles per company policy. The claimant was aware of the policy. Subsequently, the employer determined that although Mr. Jones had initially been calling in sick, he was in fact not sick but incarcerated.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Jones quit his employment by failing to report or provide notification for three or more consecutive workdays. It does.

The evidence in the record clearly establishes that the claimant's separation from employment took place when he discontinued reporting for scheduled work and discontinued providing notification to the employer as required by policy. Mr. Jones last called in on September 30, 2008. Although he was scheduled to work three more consecutive workdays thereafter, he did not provide any further notification to the employer regarding his impending absences. Subsequently, the employer determined the claimant had not been sick but in fact had been incarcerated.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance 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.

**DECISION:**

The representative's decision dated November 26, 2008, reference 01, is reversed. The claimant voluntarily quit work for reasons not 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 the claimant's weekly benefit amount, provided he is otherwise eligible. The issue of overpayment is remanded to the Claims Divisions for a determination as to whether there has been an overpayment, the amount, and whether the claimant will have to repay the benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw