

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L MUNDELL
Claimant

APPEAL NO. 10A-UI-08398-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY SERVICES
Employer

OC: 04/18/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Per Mar Security Services filed an appeal from a representative's decision dated June 4, 2010, reference 01, which held that no disqualification would be imposed regarding James Mundell's separation from employment. After due notice was issued, a hearing was held by telephone on July 29, 2010. Mr. Mundell participated personally. The employer participated by Shauna Webster, Human Resources Representative.

ISSUE:

At issue in this matter is whether Mr. Mundell was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mundell began working for Per Mar on May 30, 2001. He had a permanent assignment until approximately April of 2009. Thereafter, he was to call in weekly to get a new assignment. He last worked on Friday, August 7, 2009. The employer did not hear further from him until May of 2010, when he again sought work. Mr. Mundell was rehired by Per Mar on May 19, 2010.

Mr. Mundell filed a claim for job insurance benefits effective April 18, 2010. He has received a total of \$2,199.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Mundell abandoned his job when he stopped calling for available work after August 7, 2009. He did not perform any services for the employer between August 7 and when he was rehired in May of 2010. Since his rehire, he has performed some work each week, with the exception of the two weeks prior to the hearing. Given this history, the administrative law judge is not inclined to believe that Per Mar would not have had any work for him during any week between August 7 and May 19. Therefore,

Mr. Mundell's testimony that he was calling for work after August 7 is not credible. Moreover, there are inconsistencies in his testimony that detract from his overall credibility.

Mr. Mundell initially testified that he continued to work periodically after August 7. When confronted with the fact that the employer had not reported any wages for him for the third and fourth quarters of 2009 and the fact that he had not reported any wages when calling on his unemployment claim during this time frame, he acknowledged that he had not worked since August 7. He testified at one point that he had performed services for the employer for three days in November of 2009 stringing Christmas lights. He later indicated that the work had only been offered, not accepted. On the whole, his testimony was not credible.

For the reasons stated above, it is concluded that Mr. Mundell voluntarily quit his employment on August 7, 2009. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to Per Mar for Mr. Mundell's separation. As such, benefits are denied.

Mr. Mundell has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 4, 2010, reference 01, is hereby reversed. Mr. Mundell quit his employment with Per Mar for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Mundell will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw