

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L MEEK
Claimant

APPEAL NO. 11O-UI-14345-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

OC: 01/09/11
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

This matter was before the administrative law judge for rehearing upon the Employment Appeal Board's remand in Hearing Number 11B-UI-10351. An appeal hearing had occurred on August 30, 2011 in Appeal Number 11A-UI-10351-SWT. The claimant had not appeared for that hearing. Dennis Dorman had represented the employer. The claimant appealed Administrative Law Judge Steven Wise's decision in Appeal Number 11A-UI-10351-SWT.

The Claims Division decision on appeal in this matter is the July 28, 2011, reference 04, decision that allowed benefits based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. The employer had filed a timely appeal from that decision.

The new appeal hearing in the present appeal number was set for Wednesday, November 30, 2011. The parties were properly notified by notice mailed on November 8, 2011. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing. The employer was once again available through Dennis Gorman. Based on the claimant's failure to appear for the new hearing, and based on the appeal hearing record made on August 30, 2011 in Appeal Number 11A-UI-10351-SWT, the administrative law judge enters the following decision.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge hereby adopts the following finding of facts contained in Appeal Number 11A-UI-10351-SWT and based on the employer's August 30, 2011 sworn testimony.

James Meek was employed by TM1 Stop, L.L.C., as a full-time telephone account manager from August 4, 2011. Mr. Meek was absent from work without notifying the employer on

June 15, 16, 17, 20, 21, 22, 23, and 24, 2011. Mr. Meek abandoned the employment and never contacted the employer about returning to work.

Mr. Meek established an additional claim for unemployment insurance benefits that was effective July 15, 2011 and received benefits in connection with that claim.

REASONING AND CONCLUSIONS OF LAW:

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.

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 871 IAC 24.25.

When an employee is absent three days without notifying the employer in violation of the employer's policy, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

Mr. Meek voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Meek is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Meek.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

The administrative law judge notes that the overpayment issue may already have been addressed as part of a remand in Appeal Number 11A-UI-10351-SWT.

DECISION:

The Agency representative's July 28, 2011, reference 04, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits. The administrative law judge notes that the overpayment issue may already have been addressed as part of a remand in Appeal Number 11A-UI-10351-SWT.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs