

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**HUGO TALAVERA**

Claimant

**APPEAL NO. 14A-UI-05898-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON PET PRODUCTS INC**

Employer

**OC: 06/16/13**

**Claimant: Respondent (2)**

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Iowa Code § 96.5-1 - Voluntary Quit  
871 IAC 24.25(4) - Voluntary Quit Without Good Cause  
Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Tyson Pet Products, Inc. (employer) appealed an unemployment insurance decision dated May 27, 2014, (reference 02), which held that Hugo Talavera (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 1, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Shannon Sallee, Human Resources Benefits Coordinator.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time hourly production worker from December 10, 2013, through April 19, 2014. The employer's attendance policy provides that an employee is considered a voluntary quit if he is a no-call/no-show for three consecutive workdays. The claimant's last day of work was April 10, 2014. He called in sick on April 11, 12, 14, 15, and 16, 2014. There was an improper notice on April 14, 2014, but the other days were properly reported.

The claimant worked Mondays through Saturdays and on some Sundays. He was a no-call/no-show for three days ending on Sunday, April 19, 2014, and was discharged for job abandonment. The claimant never contacted the employer after April 16, 2014.

The claimant filed a claim for unemployment insurance benefits effective June 16, 2013, and has received benefits after the separation from employment in the amount of \$1,947.00. The employer provided written documentation for the fact-finding interview and a direct witness name and number. The fact finder was unable to reach the employer witness.

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

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or return to work after April 16, 2014.

The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without notification in violation of company rule. 871 IAC 24.25(4).

The claimant was deemed a voluntary quit on April 19, 2014, after three days of no-call/no-show. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant failed to participate in the hearing and there is no evidence to establish that he quit with good cause attributable to the employer.

In the alternative, the separation could also be characterized as a discharge, in which case, the employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant's three days of no-call/no-show shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has also been established and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received \$1,947.00 in unemployment insurance benefits. The benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed

written documentation which contained factual information regarding the reasons for the voluntary quit. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$1,947.00.

**DECISION:**

The unemployment insurance decision dated May 27, 2014, (reference 02), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,947.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs