

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN W IVERSON**  
Claimant

**APPEAL NO. 07A-UI-09712-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R L FRIDLEY THEATERS INC**  
Employer

**OC: 09/09/07 R: 01  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

R L Fridley Theaters (employer) appealed a representative's October 10, 2007 decision (reference 01) that concluded Steven Iverson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2007. The claimant participated personally. The employer participated by Lisa Dotson, Assistant Secretary.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 8, 2003, as a part-time general employee. He informed the employer he would be in Alabama from July 3 to 26, 2007. On July 28, 2007, he stopped by the theater and noticed he was not on the schedule. On August 5, 2007, the claimant left a note at the theater stating "Since my name is not on the schedule, I guess this is my two week's notice and I will be leaving again for three weeks." The employer assumed the claimant quit. The claimant was in Minnesota from August 6 through 10, 2007. He was in Texas from August 11 through 14, 2007. The claimant did not contact the employer after his travels. Continued work was available had the claimant not resigned.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

871 IAC 24.25, (20), (37) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was giving his two weeks' notice and never appeared for work again. When an employee gives notice of an intent to quit and the employer accepts the employee's resignation, his leaving is without good cause attributable to the employer. Likewise, when an employee is absent from work for more than ten working days for compelling personal reasons, his leaving is without good cause attributable to the employer. The claimant told the employer he was giving his notice and the employer accepted the claimant's resignation. The claimant was then gone for more than ten working days for personal reasons. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's October 10, 2007 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant is overpaid benefits in the amount of \$792.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw