

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES ALBES**

Claimant

**APPEAL NO: 14A-UI-05802-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROWN CUSTOMER DELIGHT GROUP INC**

Employer

**OC: 05/04/14**

**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 28, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 27, 2014. The claimant did not respond to the hearing notice by providing a phone number where he could be reached at the date and time of the hearing as evidenced by the absence of his name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Kelly Betts, Office Manager; Travon Taylor, General Manager; Stacy Hadfield, Claim Specialist; and Jackie Nolan, Employer Representative participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time crew member for Brown Customer Delight Group (McDonalds) from September 19, 2013 to May 5, 2014. The claimant was scheduled to work at 10:00 p.m. May 6, 2014. At 8:45 p.m. the claimant went through the drive through of the restaurant and appeared intoxicated to the employees and manager who observed him and talked to him through the second drive through window. The manager could smell the alcohol coming from the claimant's breath and reminded the claimant he had to be at work in another hour. The claimant stated he would be in but was slurring his words and was a no-call/no-show that night. The manager called General Manager Travon Taylor and Mr. Taylor called another employee to work for him that night.

The claimant came into the restaurant every morning at 4:00 a.m. for a caramel frappe. He went in May 7, 2014, and told Mr. Taylor he had a different living situation and apologized for not being at work the night before. He explained that his living situation was in flux and he did

not have any way to clean his uniform or have any stability in his living arrangements. He stated it was going to be difficult for him to get to work and Mr. Taylor told him to contact him when he had solved his living situation. Mr. Taylor decided to let the claimant take time off until he solved his living arrangement problems. The claimant started coming back in to the restaurant again about three weeks ago for his caramel frappe and told employees he has a new job at Hy-Vee. Mr. Taylor told the employees to ask the claimant if he could return to work but the claimant never responded.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was involved in a difficult living situation and did not have the stability of a home. Because of his unsettled living situation, he told the employer it would be hard for him to get to work and the employer allowed him time off until he could secure a more permanent place to live but the claimant did not return to work. Instead, when the claimant was able to return to work, he accepted a position with Hy-Vee. The employer did not initiate the separation from employment and had continuing work available for the claimant had he chosen to return to the restaurant. Under these circumstances, the administrative law judge must conclude the claimant voluntarily quit his job by taking a leave of absence and failing to return. There is no evidence the claimant left due to any unlawful, intolerable or detrimental working conditions attributable to the employer. Therefore, benefits are denied.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is

provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in

the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, while the claimant did not receive benefits due any fraud or willful misrepresentation, the employer participated in the fact-finding interview. Therefore, the recovery of benefits paid to the claimant to date cannot be waived. The claimant has received benefits but was not eligible for those benefits. The claimant is overpaid benefits in the amount of \$427.00.

**DECISION:**

The May 28, 2014, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has received benefits but was not eligible for those benefits and the recovery of the overpayment of benefits cannot be waived because the employer participated in the fact-finding interview. The claimant is overpaid benefits in the amount of \$427.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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