

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY WENTZ**

Claimant

**APPEAL NO: 13A-UI-11801-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL**

Employer

**OC: 09/22/13**

**Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Aventure Staffing & Professional (employer) appealed an unemployment insurance decision dated October 11, 2013, reference 01, which held that Kelly Wentz (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 November 20, 2013. The claimant participated in the hearing. The employer participated through Deb Miller, Human Resources Assistant and Kelsey Plueger, Industrial Branch Manager. Employer's Exhibits One and Two were admitted into evidence.

**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 originally hired on September 7, 2012 and worked on and off since that date. His most recent assignment began on August 14, 2013 as a general laborer. The claimant stopped working on September 3, 2013 due to a non-work-related medical condition. On September 5, 2013, he provided a medical note excusing him from work until September 9, 2013. The claimant was in a motor vehicle accident over the weekend and provided the employer with an updated medical excuse dated September 9, 2013, which took him off work for another week. He failed to provide any additional medical documentation to the employer but has not yet been released without restrictions

The claimant filed a claim for unemployment insurance benefits effective September 22, 2013 and has received benefits after the separation from employment in the amount of \$1,015.41.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined 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. The claimant left his employment on September 3, 2013 due to a non-work-related medical condition.

Iowa Code § 96.5-1-d provides an exception to the disqualification of benefits when an employee quits without good cause attributable only when the following conditions are all met: 1) the individual left employment due to illness, injury or pregnancy based on the advice of a licensed and practicing physician; 2) the individual immediately notified the employer after learning of the necessity of the absence or the employer consented to the absence; 3) after recovery has been certified by the physician, the individual returns to the employer and offers to perform services; and the individual's regular or comparable suitable work was not available.

A "recovery" under Iowa Code § 96.5-1-d means a complete recovery without restriction. *White v. Employment Appeal Board*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985)). Since the claimant has not yet been released without restrictions, he has therefore not fully recovered. Accordingly, his separation is considered to be a voluntary quit without good cause attributable to the employer and benefits must be 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.

In the case herein, a waiver cannot be considered because both parties participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$1,015.41.

**DECISION:**

The unemployment insurance decision dated October 11, 2013, reference 01, 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 \$1,015.41.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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