

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD C KELDING
Claimant

APPEAL NO. 10A-UI-00087-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

OC: 11/29/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Flying J, filed an appeal from a decision dated December 24, 2009, reference 01. The decision allowed benefits to the claimant, Richard Kelding. After due notice was issued a hearing was held by telephone conference call on February 11, 2010. The claimant participated on his own behalf. The employer participated by General Manager Gail Anderson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Richard Kelding was employed by Flying J from May 29, 2008 until November 23, 2009 as a full-time prep worker in the deli. He had received only one disciplinary action during the course of his employment. On September 30, 2009, he was placed on a 30-day probation, which he successfully completed.

His last day of work was November 15, 2009. He had requested, and been granted, a few days off, and was scheduled to work again November 20, 21 and 22, 2009. He called in sick each of those days. When he arrived at work on Monday, November 23, 2009, he notified Cindy Cannon, the supervisor of the deli, he was quitting and left his uniform. Ms. Cannon notified General Manager Gail Anderson that same day. Continuing work was available to the claimant had he not quit, and he was not in danger of discharge for missing three days of work because they were due to illness and were properly reported.

Mr. Kelding maintains he was fired by Ms. Cannon, but she does not have the authority to fire anyone, only Ms. Anderson may do that. The general manager notifies employees personally of any discharge and does not delegate that to individual supervisors. Ms. Anderson did not discharge Mr. Kelding.

Richard Kelding has received unemployment benefits since filing a claim with an effective date of November 29, 2009.

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.

The claimant's assertion that he quit is not supported by the record. The general manager did not authorize any discharge and even if she had, she would have notified the claimant personally rather than delegate that duty to the deli supervisor. Mr. Kelding was not in danger of being discharged for missing three days of work that would have warranted a written warning only.

The record establishes the claimant quit even though continuing work was available to him. He quit without good cause attributable to the employer and is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 24, 2009, reference 01, is reversed. Richard Kelding is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs