

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MYKEAL A SHADE**  
Claimant

**APPEAL NO. 11A-UI-06181-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABM LTD  
SERVICEMASTER GREEN**  
Employer

**OC: 04/03/11  
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Servicemaster, filed an appeal from a decision dated April 27, 2011, reference 01. The decision allowed benefits to the claimant, Mykeal Shade. After due notice was issued, a hearing was held by telephone conference call on June 9, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Greg Stearns.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Mykeal Shade was employed by Servicemaster from December 8, 2010 until March 30, 2011 as a full-time janitor. On March 14, 2011, he came to Human Resources Manager Greg Stearns with a note from his doctor. Due to a non-work-related injury to his arm he was unable to work at his regular job and the employer had no light duty work available.

Mr. Stearns asked Mr. Shade when he might be able to return to work and the claimant said he had a follow up doctor's appointment on March 28, 2011, and expected to be released at that time. The employer said to notify him immediately after the appointment with an update and the claimant said he would.

The claimant was no-call/no-show on March 28 and 29, 2011. Mr. Stearns attempted to call him several times during those two days but he did not answer the phone and a message stated the phone number was not set up to take voice mail messages. When Mr. Shade was again no-call/no-show to work on March 30, 2011, he was considered a voluntary quit.

Mr. Shade eventually did appear on April 4, 2011, to pick up his paycheck and drop off his uniforms. He did not provide a doctor's excuse or any other explanation for his failure to notify the employer.

Mykeal Shade has received unemployment benefits since filing a claim with an effective date of April 3, 2011.

### **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 declined to come to work or to contact the employer as agreed starting March 28, 2011. He did not participate in the hearing to provide any explanation for his failure to contact the employer as agreed with an update on his medical situation. This must be considered job abandonment and a refusal to continue working for the employer. It is a voluntary quit without good cause attributable to the employer and the claimant 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 April 27, 2011, reference 01, is reversed. Mykeal Shade 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.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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