

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN N HUNTER
Claimant

APPEAL NO. 09A-UI-00083-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER TRADING CORPORATION
Employer

OC: 02/24/08 R: 04
Claimant: Respondent (2-R)

Section 96.5-1-d - Voluntary Quit for Medical Reasons
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Alter Trading Corporation (employer) appealed a representative's December 29, 2008 decision (reference 06) that concluded Justin Hunter (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 15, 2009. The claimant did provide a telephone number for the hearing but did not answer the telephone. The administrative law judge left a message for the claimant to call immediately. The claimant did not call the administrative law judge during the hearing. The employer participated by Nancy Schlesinger, Manager of Human Resources, and John Denkmann, Facility Manager.

ISSUE:

The issue is whether the claimant is denied unemployment insurance benefits because he voluntarily quit work without good cause attributable to the employer. In addition whether the claimant is able and available for work.

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 hired on April 28, 2008, as a full-time general laborer. The claimant signed for receipt of the employer's handbook on April 23, 2008. The employer has a policy that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer. On November 3, 4 and 5, 2008, the claimant did not appear for work and did not call to inform the employer of the reason for the failure to appear for work. On November 6, 2008, the claimant appeared for work and said he was in the hospital for mental issues through November 4, 2008. The employer asked the claimant to provide proof of his illness by doctor's note. The claimant said he could not provide any note. The claimant was considered to have quit for failing to appear for work without notice for three days. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for three days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

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 benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's December 29, 2008 decision (reference 06) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs