

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN T PERRY**  
Claimant

**APPEAL NO. 07A-UI-10028-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 09/23/07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Qwest, filed an appeal from a decision dated October 24, 2007, reference 05. The decision allowed benefits to the claimant, Brian Perry. After due notice was issued a hearing was held by telephone conference call on November 14, 2007. The claimant participated on his own behalf. The employer participated by Telesales Manager Nikki Benz and was represented by Barnett Associates in the person of Dave Wood.

**ISSUE:**

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

**FINDINGS OF FACT:**

Brian Perry was employed by Qwest from June 4 until September 13, 2007, as a full-time sales associate. He received a written warning on August 24, 2007, for absenteeism. The warning advised him his job might be in jeopardy but the employer takes each absence on a case-by-case basis.

On September 11 and 12, 2007, the claimant was a no-call/no-show to work. Telesales Manager Nikki Benz, under company policy, sent a “return to work” letter to the claimant notifying him he would be considered to have abandoned his job if he did not contact the employer by September 17, 2007. Ms. Benz did call him on September 13, 2007, at which time he told her that he would “have to quit” because his son was in the hospital. She told him not to make any decisions yet, but to come in and they would talk to the supervisor, Paula. However, Ms. Benz did check with the medical faculty where the claimant had indicated his son was admitted and was told that person had not been seen at that facility.

Ms. Benz called the claimant back and told him what she had discovered and at that time he said he was going to quit and the employer told him to bring in his badge.

Brian Perry has received unemployment benefits since filing a claim with an effective date of September 23, 2007.

## **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 testimony is that he was fired but the record does not support this contention. The administrative law judge finds the claimant's testimony to be lacking in credibility and consistency. The employer provided specific testimony of the claimant's dates of absence, letters sent, phone calls made and content of the conversation. He quit, apparently because he feared he would be discharged for absenteeism, and misrepresented the reason for his absence as a sick child, which was discovered to be incorrect. The claimant quit when the discrepancy was discovered. He was not threatened with discharge, only encouraged to come in and discuss the matter with the supervisor, which he declined to do. This does not constitute good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of October 24, 2007, reference 05, is reversed. Brian Perry is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,520.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs