

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES WALLACE**  
Claimant

**APPEAL NO. 13A-UI-10729-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 08/04/13**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment  
871 IAC 24.50(10) – Employer Participation

**STATEMENT OF THE CASE:**

The employer, Pilot Travel Centers (Pilot), filed an appeal from a decision dated September 13, 2013, reference 02. The decision allowed benefits to the claimant, Charles Waldlace. After due notice was issued a hearing was held by telephone conference call on October 15, 2013. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by General Manager Jill Claeys and Shift Lead Jessica Lavad.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Charles Wallace was employed by Pilot until February 27, 2013 as a full-time cashier. He was given a documented verbal warning on February 21, 2013, for tardiness. He became belligerent and verbally abusive to Shift Leader Jessica Lavad who finally ordered him to leave because she would not tolerate such behavior toward her and his co-workers did not need to work with him if he was going to be belligerent. She informed him he would be given a written warning the next time he was late for work. He told her at that time she might as well start writing him up because he was going to be late the next day as well. Mr. Wallace did not return to work after that and was considered a voluntary quit.

The employer participated in the fact-finding interview by submitted a letter. The letter did not specify any details and stated only he was a quit "by failing to appear or call in for work." The letter provided only the name and phone number of an account representative from Thomas and Thorngren, not anyone at Pilot with firsthand knowledge.

Charles Wallace has received unemployment benefits since filing a claim with an effective date of August 4, 2013.

**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.

871 IAC 24.25(28) 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:

(28) The claimant left after being reprimanded.

The claimant refused to continue working after being reprimanded for tardiness. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

**DECISION:**

The representative's decision of September 13, 2013, reference 02, is reversed. The claimant is overpaid unemployment benefits in the amount of \$665.00. The claimant is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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