

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIRK A SERVANTEZ**  
Claimant

**APPEAL 17A-UI-00028-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AUTO EDGE INC**  
Employer

**OC: 12/04/16  
Claimant: Respondent (4)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 28, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 23, 2017. The claimant Kirk Servantez did not participate. The employer Auto Edge Inc. participated through Owner Dan Ryerson, Service Manager Brad Broers, and Office Manager Molly Kern.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a service technician from October 31, 2011, until this employment ended on December 5, 2016, when he voluntarily quit to accept other employment.

On December 5, 2016, Broers met with claimant to discuss a rumor he heard that claimant had found another job. Broers asked claimant if the rumor was true. Claimant admitted he had applied for and accepted a position elsewhere. Claimant then said he was leaving, got up, collected his belongings, and left. Broers testified that had claimant not left, the employer would have allowed him to continue working until he started his new job and had he not quit for new

employment work would have continued to be available to him. Broers heard that claimant started his new job on December 9.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 4, 2016. The claimant has not filed for or received any benefits to date. The employer did not participate in the fact-finding interview, as it was under the impression that the interview had been rescheduled for another day. The fact finder determined claimant qualified for benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Claimant left his position with the employer to accept another full time position. The employer believes claimant began his new job on December 9, 2016. Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the

claimant from receiving benefits, the claimant did leave in order to accept other employment. While normally these issues would not be address unless and until a claimant separated from the subsequent employer, benefits are allowed, provided the claimant is otherwise eligible, and the account of the employer shall not be charged. As the claimant has not received any benefits to date, the issues of overpayment and participation are moot.

**DECISION:**

The December 28, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 297196-000) shall not be charged. The issues of overpayment and participation are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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