

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH KATZENBURGER**  
Claimant

**APPEAL NO: 14A-UI-02355-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 01/19/14**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 20, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on March 25, 2014. The claimant participated in the hearing. Gretchen Goettig, Human Resources/Payroll, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issues are whether the claimant voluntarily left his employment with good cause attributable to the employer and whether he is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time security officer for Per Mar Security & Research from May 9, 2012 to December 18, 2013. He voluntarily left his position due to personal issues.

The claimant's last day worked was December 17, 2013. He was scheduled to work December 21 and 22, 2013, but called the employer to say he would not be in due to the road conditions. He never contacted the employer again to say he had decided not to return to his job. The employer tried to call him several times to no avail.

The claimant's 12-year-old granddaughter began living with him in November 2013. He testified the employer's assignments do not pay enough money for him to cover childcare for his granddaughter and gas when he has to drive around on assignment. He indicated he was actually losing money by working for the employer's wages although he agrees he was aware of the pay and the fact he would have to use his own gas when he was hired.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2.

The claimant knew the rate of pay and that the employer would not cover his gas expenses at the time of hire. The claimant worked under the same conditions from May 2013 until December 2013, without complaint, even though he was not necessarily satisfied with the wages. The only new addition to the equation occurred when the claimant's granddaughter came to live with him in November 2013 and required childcare, which is expensive, especially when wages are low. The claimant decided he was losing money by working and paying for childcare and consequently decided to quit his job. While the claimant had good personal reasons for voluntarily leaving his job with the employer, he has not demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. (Emphasis added). Therefore, benefits must be denied.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

- (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused

absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer’s representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) “Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

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 employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer participated in the fact-finding hearing personally and also provided documentation to the representative. The employer's actions meet the definition of participation as stated above. Consequently, the claimant has been overpaid benefits in the amount of \$1,503.00.

**DECISION:**

The February 20, 2014, reference 02, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has been overpaid benefits in the amount of \$1,503.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs