

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL MOORE
Claimant

APPEAL NO: 11A-UI-15289-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOZONERS LLC
Employer

OC: 10-30-11
Claimant: Respondent (2/R)

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 November 23, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on December 22, 2011. The claimant participated in the hearing. Nathan Chase, District Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time commercial sales manager for Autozoners from April 12, 2003 to November 1, 2011. District Manager Nathan Chase went to the store November 1, 2011, on a routine visit and took the claimant outside to discuss his sales performance, his approach to customers, and the fact that he had not shaved that day which gave an unprofessional appearance in violation of the employer's policy. As a result of his failure to shave Mr. Chase sent the claimant home to clean up and shave around 10:00 a.m. and the claimant did not return to work again. Mr. Chase tried to call the claimant around 11:30 a.m. and left a message asking where he was and stated he expected him back at work but the claimant did not answer or return the phone call. Mr. Chase had no intention of terminating the claimant's employment and had not issued any warnings to him. If he had made the decision to terminate the claimant's employment he would have had to involve human resources, complete documentation, and had a witness present during the termination proceedings. The claimant never returned to work after being sent home to shave November 1, 2011.

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 was sent home to shave and never returned to work. The employer had not issued any warnings to the claimant, had not contacted human resources about terminating the claimant's employment, and did not have a witness present which is required when an employee is terminated. The evidence does not show the claimant was discharged but rather that he quit his job by failing to return to work after being sent home to shave. He has not demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The November 23, 2011, reference 01, 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 received benefits but was

not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css