

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES O MOTLEY
Claimant

APPEAL NO: 20A-UI-07487-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER TRADING CORPORATION
Employer

OC: 04/26/20
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 June 25, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 10, 2020. The claimant participated in the hearing. Jason Weiland, Plant Manager; Lance Varner, Supervisor; Stacey Tinkham, Claims Manager; and Jeff Oswald, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment for 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 laborer for Alter Trading Corporation from June 3, 2019 to March 5, 2020. The claimant believed he had a court date February 28, 2020, and notified the employer he had court. His court date was actually February 27, 2020. When he did not report for work or call the employer February 29, 2020, the employer entered PTO for him. He lost the interlock device he needed to use in any vehicle he drove following an October 2018 OWI and that in combination with other probation issues and missing his court date resulted in the claimant being sentenced to 60 days in jail. The claimant's daughter texted the employer March 2, 2020, and said he spent the night in jail and had court that day and she hoped he would be released. On March 11, 2020, his daughter texted the employer and said he was sentenced to 60 days in jail and the employer stated it considered him to have voluntarily quit his job. The claimant contacted the employer April 28, 2020, the day after he was released from jail, to ask if he could return to work and was told he could not. The employer told him he could reapply but the claimant did not do so.

The claimant has claimed and received state unemployment insurance benefits in the amount of \$5,054.00 for the 14 weeks ending August 8, 2020. He has also received \$7,800.00 in Federal Pandemic Unemployment Compensation for the 13 weeks ending July 28, 2020.

The employer did not receive notice of the hearing.

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(11)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. *Incarceration – disqualified.*

- a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:
 - (1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.
 - (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.
 - (3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.
 - (4) The employer rejected the individual's offer of services.
- b. A disqualification under this subsection shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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) (amended 1998).

The claimant did not notify the employer he would be absent due to incarceration before his absences beginning February 28, 2020, and the charges against the claimant were not dismissed. The claimant did report back to the employer and offered his services within one day of being released from jail and the employer declined his offer. However, in order to be eligible for benefits the claimant must meet all of the requirements set out above. Because the claimant did not inform the employer he would be gone before his incarceration and the charges were not dismissed, the claimant is not eligible for unemployment insurance benefits. Therefore, benefits must be denied.

The next issue in this case is whether the claimant/appellant was overpaid unemployment insurance benefits.

Iowa Admin. Code r. 871-24.10 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 section 96.3(7)a, b.

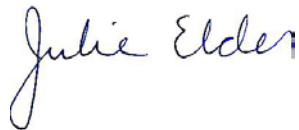
The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

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

The law also states that an employer is to be charged if “the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits...” Iowa Code section 96.3-(7)(b)(1)(a). Here, the employer did not receive the fact-finding notice. Benefits were paid, but not because the employer failed to respond timely or adequately to the agency’s request for information relating to the payment of benefits. Instead, benefits were paid because the employer did not receive notice of the fact-finding interview. Thus, the employer cannot be charged. Since neither party is to be charged then the overpayment is absorbed by the fund.

DECISION:

The June 25, 2020, 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 been overpaid unemployment insurance benefits in the amount of \$5,054.00 for the 14 weeks ending August 8, 2020, but is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview through no fault of its own and its account shall not be charged. Rather, the overpayment shall be charged to the fund.



Julie Elder
Administrative Law Judge

August 18, 2020
Decision Dated and Mailed

je/scn