

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABRAHAM SCHLICHTMANN
Claimant

APPEAL NO. 19A-UI-06925-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN LUTHER HOME CORPORATION
Employer

**OC: 07/28/19
Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 19, 2019, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on June 15, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on September 24, 2019. Claimant Abraham Schlichtmann did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Connie Hickerson of Equifax represented the employer and presented testimony through Janet Patters. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 5 through 10 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Abraham Schlichtmann was employed by Martin Luther Home Corporation as a full-time Certified Nursing Assistant at the long-term care facility the employer operates in Dubuque. Mr. Schlichtmann began the employment in 2017 and last performed work for the employer on June 17, 2019. Before Mr. Schlichtmann worked his last day, Mr. Schlichtmann provided the employer with a

written resignation memo in which he indicated his last day in the employment would be June 30, 2019. Mr. Schlichtmann did not report for work during the notice period. Instead, he commenced giving daily notice of his need to be absent from the employment and did through June 30, 2019. Though Mr. Schlichtmann had received reprimands for attendance earlier in the employment, his employment was not in jeopardy at the time he submitted his quit notice and ceased appearing for work.

Mr. Schlichtmann established an original claim for benefits that was effective July 28, 2019 and received \$1,336.00 in benefits for four weeks between August 25, 2019 and September 21, 2019. Martin Luther Home Corporation is the sole base period employer.

On August 15, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Schlichtmann's separation from the employment. Neither the employer nor Mr. Schlichtmann participated in the fact-finding interview. The deputy attempted to reach the employer at the contact number on record with Iowa Workforce Development, but had to leave a message when no one answered.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

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

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 requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Schlichtmann voluntarily quit for personal reasons and without good cause attributable to the employer. Mr. Schlichtmann did not participate in the appeal hearing and did not present any evidence to rebut the employer's credible testimony regarding the voluntary nature of the separation and circumstances surrounding the separation. Mr. Schlichtmann is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Schlichtmann must meet all other eligibility requirements.

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) and (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. The employer's account shall not be charged for benefits for the period beginning September 22, 2019.

DECISION:

The August 19, 2019, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective June 17, 2019. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,336.00 in benefits for four weeks between August 25, 2019 and September 21, 2019. The claimant is not required to repay the overpaid benefits. The employer's account may be charged for the overpaid benefits. However, the employer's account shall not be charged for benefits for the period beginning September 22, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs