

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN E HAYNES

Claimant

APPEAL NO. 15A-UI-02792-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 03/02/14

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 February 19, 2015, reference 03, 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 an agency conclusion that the claimant had been discharged on January 8, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on April 8, 2015. Claimant Calvin Haynes participated. Kristi Fox represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two and Three into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated 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 was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Tyson Fresh Meats as a full-time production worker from April 2014 and last performed work for the employer on or about January 6, 2015. Claimant's usual work hours were 7:00 a.m. to 3:45p.m., Monday through Friday and occasional Saturdays. On January 9, 2015, the employer delayed the start of work by two hours, the 9:00 a.m., due to weather. On that day, the claimant notified the employer at 8:15 a.m., that his car battery was dead and that he needed to have his car jumpstarted. The employer told the claimant that he had until 9:00 a.m. to report for work. The employer did not say as part of that conversation that

the claimant was discharged from the employment. On January 12, 2015, claimant notified the employer he would be absent from work due to illness. Thereafter, the claimant made no further contact with the employer and did not return to work. The employer documented eight consecutive no-call/no-show absences. The employer waited until February 21, 2015 to document termination of the employment due to job abandonment.

The claimant established additional claim that was effective February 1, 2015. The additional claim was based on a March 2, 2014 original claim date. In connection with the additional claim, the claimant received \$596.00 in benefits for the period of February 1, 2015 through February 28, 2015. Tyson Fresh Meats, Inc., was not a base period employer for purposes of the claim year that started for the claimant on March 2, 2014 and that ended for the claimant on February 28, 2015. Accordingly, Tyson Fresh Meats' account was not assessed for benefits paid to the claimant for the period of February 1, 2015 through February 28, 2015. The claimant established a new original claim for unemployment insurance benefits that was effective March 1, 2015. Workforce Development calculated his weekly benefit amount at \$283.00. In connection with the new original claim, the claimant received \$3,113.00 in benefits for the 11-week period between March 1, 2015 and May 16, 2015. The employer is a base period employer for purposes of the claim year that started for the claimant on March 1, 2015.

On February 18, 2015, a Workforce Development claims deputy held a fact-finding interview to address the claimant's separation from the employer. Both parties received appropriate notice of the fact-finding interview, but neither participated. The employer had designated Kristi Fox, Human Resources Clerk, as the person who would represent the employer at the fact-finding interview. At the time of the fact-finding interview, the claims deputy attempted to reach Ms. Fox at the number provided for the fact-finding interview. At that time, the claims deputy learned that Ms. Fox was on her scheduled day off and the Human Resources Manager Jim Hook was in a meeting. The claims deputy left a message for Mr. Hook, but Mr. Hook did not respond to the message. On February 20, 2015, the employer submitted a timely protest in response to the notice of claim and included documentation concerning the employer's assertion that claimant had abandon the employment.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 weight of the evidence in the record fails to support the claimant's assertion that he was discharged on January 9, 2015, when he called to notify the employer that he might be late getting to work because his battery was dead and he needed to jumpstart his battery. The claimant's belated assertion that he construed the employer statement on that day to indicate that he was discharged from the employment is sufficiently contradicted by the employer's documentation of another absence report on January 12, 2015, when the claimant notified the employer he would be absent due to illness. In addition, a reasonable person would not have construed the employer's comment on January 9, that the claimant had an extra two hours to get to work that day, as a discharge. To the extent the claimant asserts that he was discharged on that day, he does so unreasonably. The weight of the evidence indicates that the claimant voluntarily quit the employment by failing to appear for additional shifts or make further contact with the employer after January 12, 2015. The claimant had at least eight consecutive no-call/no-show absences after that date. Even after those no-call/no-show absences, the employer further delayed calling the employment done. The claimant simply never returned. The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages equal to ten times his weekly benefit amount, provided he meets 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 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 \$596.00 in benefits for the period of February 1, 2015 through February 28, 2015 and \$3,113.00 in benefits for the 11-week period between March 1, 2015 and May 16, 2015. 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 \$3,113.00 in benefits for the 11-week period between March 1, 2015 and May 16, 2015. The employer's account will not be charged for benefits paid to the claimant on or after the entry date of this decision.

DECISION:

The February 19, 2015, reference 03, decision is reversed. The claimant voluntarily quit the employment effective February 12, 2015 without good cause attributable to the employer. The claimant is disqualified for benefits until 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 was overpaid \$596.00 in benefits for the period of February 1, 2015 through February 28, 2015 and \$3,113.00 in benefits for the 11-week period between March 1, 2015 and May 16, 2015. The claimant is not required to repay the overpayment. The employer remains subject to charge for the \$3,113.00 in benefits for the 11-week period between March 1, 2015 and May 16, 2015. The employer's account will not be charged for benefits paid to the claimant on or after the entry date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css