

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FREDRICK RORY**  
Claimant

**APPEAL NO: 07A-UI-08254-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 07/22/07 R: 04  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Kraft Pizza Company (employer) appealed an unemployment insurance decision dated August 16, 2007, reference 01, which held that Fredrick Rory (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2007. The claimant participated in the hearing. The employer participated through Jessica Ayala, Human Resources Associate; Julie Stokes, Assistant Human Resources Manager; and Jodi Martin, Plant Staffing Specialist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time grinder from June 30, 1999 through July 1, 2007 when he was considered to have voluntarily quit. The employer's attendance policy provides that an employee is considered to have abandoned his job if he is a no-call/no-show for two consecutive days. The claimant was aware of the employer's attendance policy. He worked Fridays, Saturdays and Sundays. His last day of work was June 22, 2007. He called in absences due to illness on June 23, 24 and 29, 2007. The claimant spoke with his supervisor on June 29, 2007 and said that he would be back at work on the following day. Shortly thereafter, he left a message with his supervisor that he had to take his mother to the Mayo Clinic. He was a no-call/no-show on June 30 and July 1, 2007. The employer spoke with him on July 5, 2007 and the claimant said he assumed that his supervisor would know that he could not take his mother to the Mayo Clinic in just one day and that he did not bother to call because he was busy. The claimant was not allowed to return to work and the employer considered his job abandonment effective July 11, 2007.

The claimant filed a claim for unemployment insurance benefits effective July 22, 2007 and has received benefits after the separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or report to work for two consecutive work days. He did this even though he knew that his actions were in violation of company policy and would be considered job abandonment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated August 16, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his

weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,806.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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