

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL A STAFFELLI
Claimant

APPEAL NO: 11A-UI-10385-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 06/12/11

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

G M R I, Inc. (employer) appealed a representative's July 29, 2011 decision (reference 01) that concluded Daniel R. Staffelli (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2011. The claimant did not participate in the hearing; the hearing notice which was mailed to his address of record was returned by the postal service as undeliverable, and his telephone number of record was disconnected. Marco Holter appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 7, 2010. He worked part time (30 – 35 hours per week) as a line cook at the employer's West Des Moines, Iowa restaurant. His last day of work was May 4, 2011.

The claimant was scheduled to work on May 5, but a person who claimed to be his aunt called into the employer reporting that he would be absent, that he was in jail. The employer attempted to contact the claimant, but was unsuccessful. On May 6 the claimant was again scheduled for work but was a no-call, no-show; the employer again unsuccessfully attempted to contact the claimant. He was further scheduled for work on May 13, May 14, and May 15, but was also a no-call, no-show for those shifts. The employer eventually removed the claimant from its system as a voluntary quit by job abandonment. Nothing further was heard from or regarding the claimant until in approximately mid-June, when Mr. Holter, general manager of the West Des Moines restaurant, received a contact from his counterpart at the employer's restaurant in Cedar Rapids, indicating that the claimant was seeking employment at that location.

The claimant established a claim for unemployment insurance benefits effective June 12, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's July 29, 2011 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 15, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for

insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs