

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SETH T BEHNE
Claimant

APPEAL NO. 13A-UI-12083-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 09/22/13
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.2-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 16, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on November 20, 2013. The claimant responded to the hearing notice but was not available when called by the administrative law judge. A detailed message was left on how to participate in the hearing. The claimant did not call in. The employer participated by Duane Hepker, business manager. The record consists of the testimony of Duane Hepker and Employer's Exhibits 1-11.

After the hearing was completed and the record was closed, the claimant called in. He said that he was at a doctor's appointment with his son and that he had turned off his phone. He did not call prior to the hearing to request a postponement nor did he have a good explanation on why he did not do that. The administrative law judge does not consider this to be good grounds to be reopen the record.

ISSUES:

Whether the claimant was discharged for misconduct; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a small package delivery and pick up service. The claimant was hired on January 3, 2006. The claimant's last day of work was August 6, 2013. At that time, the claimant worked part time loading trucks. The claimant resigned his position on August 12, 2013. He called his supervisor, Andy Giddings, and told Mr. Giddings that he had personal issues and would not be returning to work at the employer. The employer deemed this to be a resignation. Work was available had the claimant elected to come to work.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant voluntarily resigned his position on August 12, 2013, for personal reasons. The claimant did not participate in the hearing and the reasons for his resignation are unknown. Since the claimant voluntarily quit without good cause attributable to the employer, benefits are denied.

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 has received benefits but has been denied benefits as a result of this decision. The claimant was therefore overpaid benefits. There is no indication in the file that the fact findings documents were sent to the parties. This case is therefore remanded to the claims section to determine the amount of the overpayment; whether the claimant should be required to repay the benefits; and whether the employer participated in the fact finding.

DECISION:

The decision of the representative dated October 16, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible. This case is remanded to the claims section for determination of the overpayment issues.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs