

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE R BOYER
Claimant

APPEAL NO: 13A-UI-10970-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DLS MANAGEMENT CORP
Employer

OC: 06/09/13
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 17, 2013 determination (reference 08) that held the claimant qualified to receive benefits and the employer's account potentially subject to charge because the claimant quit for reasons that qualify him to receive benefits. The claimant responded to the hearing notice, but was not available for the hearing. A message was left for the claimant to contact the Appeals Section immediately if he wanted to participate in the hearing. The claimant did not respond to the message left for him. Don Sheedy, the owner, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

Has the claimant been overpaid any benefits?

Is the claimant required to pay back any overpayment of benefits?

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time banquet chef in March 2013. On June 14, 2013, the employer met with the claimant to tell him he would be working with another chef because he could not by himself complete all the tasks of a banquet chef. When the employer talked to him, the employer had no plans of ending the claimant's employment. The employer planned to have the claimant still work full time and he would earn the same wage. Some of the time the claimant would be working in the restaurant so he would work 40 hours a week.

The claimant told the employer he knew this was coming and quit. The claimant signed a termination form indicating he voluntarily quit working for the employer. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of June 9, 2013. He filed claims for the weeks ending June 15 through July 27, 2013. He received his maximum weekly benefit amount of \$242.00 for each of these weeks.

Before the September 17, 2013 determination was issued, the employer provided information to a claims specialist who asked how the claimant's employment ended. The claimant was not present when the employer talked to the claims specialist at a fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant quits without good cause when he quits because he does not believe his work is satisfactory, but the employer has continuing work for him. 871 IAC 24.25(33) Even though the claimant would have been working with another chef, his hours and wages would not change. The employer did not plan to substantially change his job duties. The evidence does not establish that the claimant quit because of a substantial change in his employment. The claimant may have had compelling reasons for quitting, but the evidence does not establish that he quit for reasons that qualify him to receive benefits. As of June 9, 2013, the claimant is not qualified to receive benefits.

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. 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. Iowa Code § 96.3(7)b.

In this case, the initial determination held the claimant qualified to receive benefits. But as a result of this decision, the claimant is not qualified to receive benefits. The claimant has been overpaid \$1,694.00 in benefits he received for the weeks ending June 15 through July 27, 2013.

Even though the claimant is not at fault in receiving the overpayment, he is required to pay back the overpayment because the employer participated at the fact-finding interview. .

DECISION:

The representative's September 17, 2013 determination (reference 08) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 9, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. As a result of this decision, he has been overpaid \$1,694.00 in benefits he received for the weeks ending June 15 through July 27, 2013.

The claimant is required to pay back this overpayment. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css