

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI	
CHRISTOPHER S RAMEY Claimant	APPEAL NO. 18A-UI-09133-JTT
ALORICA GLOBAL SOLUTIONS INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 07/22/18 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 August 21, 2018, reference 02, 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 the Benefits Bureau deputy's conclusion that the claimant was discharged on June 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on September 19, 2018. Claimant Christopher Ramey did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Turkessa Newsone represented the employer and presented additional testimony through Justina Breakenridge. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview 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 Alorica Global Solutions, Inc., as a full-time customer service representative until May 30, 2018, when he notified the employer that he was voluntarily quitting because a he had accepted another job. The employer continued to have work available for the claimant. The claimant last performed work for the employer on April 27, 2018. The claimant then commenced an approved leave of absence under the Family and Medical Leave Act, ostensibly so that he could care for his ill mother. The agreed-upon return to work date was May 28, 2018. The claimant called in absences on May 28 and 29, stating that he needed to be absent to care for his ill mother. On May 30, 2018, the claimant spoke with an employer representative and said that he was quitting because he had accepted other employment that offered greater flexibility in dealing with his mother's illness.

The claimant established an original claim for benefits that was effective July 22, 2018 and received \$2,367.00 in benefits for the period of July 22, 2018 through September 22, 2018. The employer is a base period employer. Iowa Workforce Development held a fact-finding interview on August 14, 2018 that addressed the separation. The employer had notice of the fact-finding interview, but did not appear at the time of the fact-finding interview. The employer submitted only cursory documentation for the fact-finding interview. The claimant participated in the fact-finding interview and provided a series of intentionally misleading statements to the deputy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.22(2)(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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 evidence in the record establishes a voluntary quit on May 30, 2018 that was without good cause attributable to the employer. The claimant failed to return to the employment at the end of an approved leave of absence. The claimant notified the employer on May 30, 2018 that he was quitting because he had accepted other employment. The claimant has presented no proof that he had indeed accepted other employment prior to separating from this employer. Nor has the claimant presented proof that his quit was based on a need to care for a sick family member. 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. The claimant must meet 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 § 96.3(7)(a) and (b).

The claimant received \$2,367.00 in benefits for the period of July 22, 2018 through September 22, 2018. This decision disqualifies the claimant for those benefits. The benefits constitute an overpayment. The employer failed to participate in the fact-finding interview. The claimant took advantage of the employer's absences and provided a statement to the deputy that included several intentionally misleading statements regarding the separation. The claimant must repay the overpaid benefits. The employer's account will be relieved of charges for benefits, including charges for benefits already paid.

DECISION:

The August 21, 2018, reference 02, decision is reversed. The claimant voluntarily quit the employment on May 30, 2018 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. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,367.00 in benefits for the period of July 22, 2018 through September 22, 2018. The claimant must repay the overpaid benefits. The employer's account will be relieved of charges for benefits, including charges for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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