

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEXANDER M HAGEN**  
Claimant

**APPEAL NO. 13A-UI-12331-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**  
Employer

**OC: 10/06/13**  
**Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

The employer, APAC Customer Services, Inc. (APAC), filed an appeal from a decision dated October 24, 2013, reference 01. The decision allowed benefits to the claimant, Alexander Hagen. After due notice was issued, a hearing was held by telephone conference call on December 5, 2013. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Generalist Turkessa Newsome.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Alexander Hagen was employed by APAC from August 22, 2012 until September 30, 2013 as a full-time customer service representative. At the time of hire, and again on April 26, 2013, the claimant received the employee handbook. The attendance policy states an employee who is no-call/no-show to work for three days will be considered a voluntary quit.

On September 23, 2013, Mr. Hagen called his team leader to say he would be absent due to a family emergency. He did not indicate he would be gone more than one day but was subsequently no-call/no-show to work on September 24, 27, and 30, 2013. The employer considered him a voluntary quit under the policy.

Alexander Hagen has received unemployment benefits since filing a claim with an effective date of October 6, 2013. The employer did not participate in the fact-finding interview

## **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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant is considered to be a voluntary quit by operation of law. Under the provisions of the above Administrative Code section three days of no-call/no-show to work is considered to be voluntary quit without good cause attributable to the employer. The claimant is disqualified.

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, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

**DECISION:**

The representative's decision of October 24, 2013, reference 01, is reversed. Alexander Hagen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The claimant is overpaid \$1,385.00. However, the claimant is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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