

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN S MAGIC
Claimant

APPEAL NO. 07A-UI-07268-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KERRY INC
Employer

**OC: 06/24/07 R: 04
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Kerry, Inc. filed an appeal from a representative's decision dated July 16, 2007, reference 01, which held that no disqualification would be imposed regarding Kevin Magic's separation from employment. After due notice was issued, a hearing was held by telephone at 9:00 a.m. on August 14, 2007. The employer participated by Larry Kuecker, Plant Manager, and Peggy Niemann, Human Resources Assistant.

Mr. Magic responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. A voice mail message was left for him at 9:01 a.m. He did not respond to the message until approximately 9:30 a.m. He indicated he had been at the hospital where his mother was having surgery but planned to participate in the hearing in spite of the surgery. He acknowledged that he had been told to contact the Appeals Section if he was not contacted within five minutes of the hearing time. Mr. Magic did not establish good cause for not participating at the scheduled time and, therefore, the administrative law judge declined to reopen the hearing record.

ISSUE:

At issue in this matter is whether Mr. Magic was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Magic was employed by Kerry, Inc. from September 25, 2006 until November 14, 2006 as a full-time warehouseman. At the time of separation, he was working from 6:00 p.m. until 6:00 a.m. He knew at the time of hire that he would be working 12-hour shifts and some weekends.

At approximately 1:00 a.m. on November 15, 2006, Mr. Magic told his team leader that his uniform would be in his locker and that he was done working for Kerry, Inc. He then clocked out at 1:06 a.m. and left the premises. His only complaint had been about the long hours the job

required. He was also attending school at the time. Continued work would have been available if Mr. Magic had not quit.

Mr. Magic filed a claim for job insurance benefits effective June 24, 2007. He has received a total of \$1,332.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes that Mr. Magic voluntarily quit his employment on November 15, 2006. He told his team leader that he was done working for the company and then left before the end of his shift. These factors establish to the satisfaction of the administrative law judge that Mr. Magic quit his employment with Kerry, Inc. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1).

Mr. Magic's only complaint during his employment concerned his long hours. Apparently, he was having difficulty managing a full-time job and attending school. However, he knew at the time of hire that the job involved 12-hour shifts and some weekend work. The fact that the hours became more than he could handle did not constitute good cause attributable to the employer for quitting. Inasmuch as the evidence does not establish any other reason for the separation, benefits are denied.

Mr. Magic has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated July 16, 2007, reference 01, is hereby reversed. Mr. Magic voluntarily quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Magic has been overpaid \$1,332.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs