

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATROY MITCHELL
Claimant

APPEAL NO. 08A-UI-04518-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLIDAY INN – BETTENDORF
Employer

OC: 03/02/08 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Holiday Inn – Bettendorf (employer) appealed a representative's May 1, 2008 decision (reference 04) that concluded Latroy Mitchell (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2008. The claimant received the hearing notice and responded by calling the Appeals Section and indicating that he would be available at the scheduled time for the hearing at a specified telephone number. When the administrative law judge called that number at the scheduled time for the hearing, the claimant did answer. Contrary to the recommendation on the hearing notice instructions, the claimant's phone was a cell phone. Shortly after the hearing was convened, the claimant's connection was lost or disconnected. The administrative law judge attempted to recontact the claimant, but he did not answer his phone and did not recontact the Appeals Section; therefore, the claimant did not participate in the hearing. Sandy Fitch of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Diana Hagner and Shannon Klinkenberg. One other witness, Connie Schlichting, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on August 29, 2007. He worked full time as a pantry cook in the employer's Bettendorf hotel's restaurant. His last day of work was February 18, 2008. He worked an 8:00 a.m. to 2:00 p.m. schedule that day. He was scheduled for the same shift on February 19; he was scheduled for 4:00 p.m. to close shifts on February 20, February 21, February 22, and February 23.

On February 19, the claimant had not reported or called in to work by 8:30 a.m. The restaurant's general manager called the claimant and was told that the claimant had overslept but was getting ready and would be on his way in to work shortly. However, by 11:00 a.m. when Ms. Klinkenberg came on duty as the kitchen manager, the claimant had not arrived. She attempted to call him several more times, but did not reach him and he did not return her messages inquiring into his status. He was then no-call, no-show for his scheduled shifts thereafter. The employer then considered the claimant to be a voluntary quit by job abandonment under the employer's three-day no-call/no-show policy of which the claimant had been given notice.

The claimant established a claim for unemployment insurance benefits effective March 2, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$3,399.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 1, 2008 decision (reference 04) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 22, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,399.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css