

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROGER CHILDS**  
Claimant

**APPEAL NO. 08A-UI-10952-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTAR FOOD INC**  
Employer

**OC: 09/28/08 R: 03**  
**Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 13, 2008, reference 04, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on December 8, 2008. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. John Kelchem participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's base period was from April 1, 2007, to March 30, 2008, and without the \$1,707.00 in wages paid by the employer during the first quarter of 2008, the claimant's would only have wages totaling \$962.43 during his highest quarter of wages in his base period. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked part time as a cook for the employer from January 23, 2008, to March 18, 2008. On March 18, 2008, the claimant was sent home before the end of his shift by the manager on duty after he getting into a verbal argument with a cashier. He was told to report to work the next day to speak to Lisa Meier, the restaurant manager.

The claimant was scheduled to work on March 19, but he failed to report to work or call in to let the employer know he would not be at work. He had no further contact with the employer afterward and was considered to have voluntarily quit employment.

The claimant's base period was from April 1, 2007, to March 30, 2008, and without the \$1,707.00 in wages paid by the employer during the first quarter of 2008, the claimant's would only have wages totaling \$962.43 during his highest quarter of wages in his base period.

The claimant filed for and received a total of \$840.00 in unemployment insurance benefits for the weeks between September 28 to December 6, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code § 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.

The evidence establishes the claimant voluntarily quit employment and his quitting was not caused by the employer.

Under the unemployment insurance rules, a claimant is not disqualified after quitting a part-time job if he has enough wages from other employers to be monetarily eligible for benefits. 871 IAC 24.27. In this case, however, the claimant does not have sufficient wages from other employers to qualify because the law requires claimant to have a minimum of \$1,240 in the highest quarter of wages in the base period.

The unemployment insurance law requires benefits to 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. However, 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated November 13, 2008, reference 04, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is

otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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