

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABDULSAMAD ABUKAR**  
Claimant

**APPEAL NO. 14A-UI-12191-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOFFREDO FRESH PRODUCE CO INC**  
Employer

**OC: 11/02/14**  
**Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Benefit Overpayment

**STATEMENT OF THE CASE:**

Loffredo Fresh Produce Company, Inc. filed a timely appeal from a representative's decision dated November 21, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on August 1, 2014 under non-disqualifying conditions. After due notice was provided, a telephone hearing was held on December 15, 2014. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Jeff Palmer, Production Manager, and Ms. Maria Coarejo.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Abdulsamad Abukar was employed by Loffredo Fresh Product Company, Inc. from May 6, 2013 until August 1, 2014 when he was considered to have voluntarily quit his work because he failed to report for scheduled work for three consecutive days in a row and did not provide notification to the employer as required by company policy. Mr. Abukar was employed as a full-time celery cutter for the company and was paid by the hour. His immediate supervisor was Jeff Palmer.

The claimant's last day on the job at Loffredo Fresh Produce was July 18, 2014. Mr. Abukar began a one week vacation period on July 21, 2014 and was expected to return to work on July 28, 2014. The claimant did not return on July 28, 2014 and did not notify the employer of the reason. When the claimant did not report on July 29 and July 30, 2014 and did not provide any reason for his continuing absence, he was considered to have voluntarily quit his employment; based upon established company policy. Mr. Abukar was aware of the policy. The claimant did not further contact the employer after leaving on vacation and failing to return.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with Loffredo Fresh Produce with good cause attributable to the employer. It does not.

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 claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code Section 96.5-1. Rule 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Board, 492 N.W. 2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or report to work on July 28, 2014 and thereafter.

The claimant was deemed a voluntary quit on August 1, 2014 after three days of no-call/no-show. It is his burden to prove that the voluntary quit was for good cause that would not disqualify him. Iowa Code Section 96.6(2). The claimant failed to establish that he had quit with good cause attributable to the employer. Benefits are, therefore, denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment benefits in the amount of \$1450 since filing a claim with an effective date of November 2, 2014 for the weeks ending November 8, 2014 through December 6, 2014. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

- b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must 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 based upon 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 if it is determined they did participate in the fact-finding interview. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the Agency the benefits he received and the employer's account shall be charged.

**DECISION:**

The representative's decision dated November 21, 2014 (reference 01) is reversed. The claimant quit employment without good cause attributable to the employer, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$1450. The claimant is not obligated to repay that amount, the employer shall be charged based upon the employer's failure to participate in the fact-finding interview in this matter.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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