

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON L JONES**

Claimant

**FEDEX GROUND PACKAGE SYSTEM INC**

Employer

**APPEAL NO. 14A-UI-01892-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/19/14**

**Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(26) – Leaving for School  
Section 96.3-7 – Recovery of Overpayment  
871 IAC 24(10) – Employer Fact Finding Participation

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated February 10, 2014 reference 01 that held the claimant was not discharged for misconduct on December 24, 2013 and benefits are allowed. A hearing was held on March 11, 2014. The claimant participated. Chad Miller, Facility Manager and Nick Axell, Operations Manager, participated for the employer.

**ISSUES:**

The issue is whether claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant is overpaid unemployment benefits.

The issue is whether employer participated at fact finding.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a part-time package handler from October 12, 2012 to December 21, 2013. All of his base period wage credits are from this part-time employment.

Claimant last worked on Tuesday December 17. He reported an absence to the employer due to illness on December 18 and stated he was going to see the doctor. He did not report to work the next day. When the employer tried to contact claimant on December 19, he answered the phone and then hung-up.

Claimant came into work on Saturday December 21, turned in his badge and stated he was quitting to return to school. The employer accepted claimant's resignation.

Claimant has received benefits totaling \$567 during a seven-week period ending March 8, 2014. Neither employer witness participated at department fact finding. The employer representative submitted a form stating the period of employment and the reason for employment separation. Claimant did not commit any act of fraud or misrepresentation to obtain benefits.

**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(26) 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:

(26) The claimant left to go to school.

The administrative law judge concludes claimant voluntarily quit without good cause attributable to the employer on December 21, 2013 stating he was going back to school.

The employer offered credible testimony it did not terminate claimant and he could not offer any specific date or person that said so. While it is believable claimant became ill and missed some work due to it, this is not the employment separation reason. Whatever motivated claimant to turn in his badge and say he was quitting on December 21 to go to school is unknown, but this is the reason for employment separation.

Iowa Code section 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.

871 IAC 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.

The administrative law judge further concludes claimant is overpaid benefits \$567 for the seven-week period ending March 8, 2014 due to the disqualification imposed in this decision. Claimant committed no act of fraud or misrepresentation to obtain these benefits.

The administrative law judge further concludes claimant is not required to repay the overpayment because the employer failed to adequately participate at department fact finding. Submitting a form document is not sufficient evidence of employment separation. The employer's account is charged with the benefits paid to claimant.

**DECISION:**

The decision of the representative dated February 10, 2014, reference 01, is modified. The claimant voluntarily quit without good cause on December 21, 2013. Claimant is not required to repay the \$567 overpayment and the employer's account is charged. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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