

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY E TURNER
Claimant

APPEAL NO. 09A-UI-08904-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**Original Claim: 05/17/09
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

United Parcel Service (UPS) filed an appeal from a representative's decision dated June 12, 2009, reference 01, which held that no disqualification would be imposed regarding Timothy Turner's separation from employment. After due notice was issued, a hearing was held by telephone on July 8 and July 28, 2009. Mr. Turner participated personally and Exhibit A was admitted on his behalf. The employer participated by Jeff Teel, Business Manager, and Laurie McFadden, Human Resources. Exhibit One was admitted on the employer's behalf.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Turner began working for UPS on October 28, 2007. He worked approximately 20 hours each week as an unloader. He missed several days of scheduled work between March 29 and April 11, 2009 because he was attending to a family emergency in Colorado. He was in contact with the employer periodically while out of town. Mr. Turner last performed services for the employer on April 16, 2009.

Mr. Turner did not report for scheduled work or contact the employer after April 16. The employer waited until May 22 before taking any steps to remove him from payroll. A letter was sent to him by certified mail on May 22 advising that he no longer had employment with UPS. He had ten days in which to grieve his removal from service. There was no grievance filed and he was separated effective June 4, 2009. Continued work would have been available if Mr. Turner had continued reporting for work or had notified the employer of his intentions.

Mr. Turner filed a claim for job insurance benefits effective May 17, 2009. He has received a total of \$2,684.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Turner abandoned his job when he stopped reporting for work with no notice to the employer. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Although Mr. Turner may have been sent a discharge letter, he had already abandoned his job when the letter was sent on May 22, as he had not reported to work or contacted the employer since April 16. He initially testified that he worked some days the end of April. However, the employer's records indicate that the only payments he received for dates after April 16 were prepaid vacation or holiday pay.

The evidence of record does not establish any good cause attributable to the employer for Mr. Turner's separation. He suggested that he was discharged because he could not work the schedule desired by the employer because of his school schedule. As an employer that did not take steps to remove him from service for over a month after he stopped reporting for work, the administrative law judge is not inclined to believe the employer would not have worked with him to find hours around his school schedule.

After considering all of the evidence, the administrative law judge concludes that Mr. Turner's separation from UPS was a disqualifying event and, therefore, he is disqualified from receiving benefits. He has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 12, 2009, reference 01, is hereby reversed. Mr. Turner quit his employment with UPS for no good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Turner will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw