

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTWAN A WEBB
Claimant

APPEAL NO. 12A-UI-00518-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEXAS ROADHOUSE HOLDINGS LLC
Employer

OC: 03/06/11
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated January 5, 2012, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 13, 2012. The claimant, although duly notified, did not respond to the notice of hearing. The employer participated by Mr. Joseph Haste, Hearing Representative and witness, Mr. Quint Eatherton, Managing Partner.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Antwan Webb was employed by Texas Roadhouse Dubuque from September 14, 2011 until November 17, 2011 when he voluntarily quit employment. Mr. Webb worked as a part-time dishwasher and was paid by the hour. His immediate supervisor was Justin Gruetzmadrer.

On November 17, 2011 the claimant's supervisor noticed that the claimant was inactive and leaning against the dishwasher in his work area. When Mr. Gruetzmadrer instructed the claimant to resume washing dishes, the claimant responded with a barrage of inappropriate comments directed to his supervisor and to Mr. Eatherton who had arrived in the area. When Mr. Eatherton attempted to calm the claimant the claimant responded with more profanity and stated, "I'm out of here, f... you guys." The claimant then walked off the job.

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 good cause attributable to the employer. It does not.

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(22) and (28) provide:

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:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

Inasmuch as the evidence in the record establishes that Mr. Webb left his employment after being given a reasonable and work-related directive the administrative law judge concludes that the claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

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.

DECISION:

The representative's decision dated January 5, 2012, reference 02, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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