

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEVI B CARTER

Claimant

APPEAL NO. 07A-UI-07996-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXECUTIVE LASER WASH

Employer

**OC: 07/22/07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, Executive Laser Wash, filed an appeal from a decision dated August 13, 2007, reference 01. The decision allowed benefits to the claimant, Levi Carter. After due notice was issued, a hearing was held by telephone conference call on September 5, 2007. The claimant provided a telephone number and was contacted. It was evidently a cell phone, which either lost the connection or the claimant hung up and he could not be contacted after that. A message was left on the voice mail indicating the hearing would proceed without him unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 8:15 a.m., he had not contacted the Appeals Section and did not participate. The employer participated by General Manager Gary Fritz.

ISSUE:

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

FINDINGS OF FACT:

Levi Carter was employed by Executive Laser wash from May 1 until June 18, 2007, as a full-time attendant. He was given verbal warnings by General Manager Gary Fritz during his employment because he frequently would not appear for work on the weekends, which is a critical busy time for the car wash.

On June 16, 2007, he was scheduled to begin work at 8:00 a.m. and at noon he called Mr. Fritz and said he just woke up. The employer had not known the claimant was not at his work station prior to that. The general manager said it appeared Mr. Carter did not want to keep his job and the claimant assured him he did. He was told to get to work as soon as possible but he was no-call/no-show for the remainder of that shift and the entire shift on Sunday, June 17, 2007.

On Monday, June 18, 2007, he appeared at work and handed in his keys, apologizing for causing "all the trouble." The general manager told him if he got his problems "taken care of," he could reapply for his job.

Levi Carter has received unemployment benefits since filing a claim with an effective date of July 22, 2007.

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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant quit rather than continue to do the job. For reasons that are not in the record, Mr. Carter frequently did not appear for work at the beginning of his scheduled shift, especially for the busy weekend days. It can only be concluded he did not chose to continue working. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 13, 2007, reference 01, is reversed. Levi Carter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$417.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw