

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER B CHAMBERLAIN
Claimant

APPEAL NO: 06A-UI-08321-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES USA
Employer

OC: 07/09/06 R: 03
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Securitas Security Services USA (employer) appealed a representative's July 28, 2006 decision (reference 01) that concluded Christopher B. Chamberlain (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 6, 2006. The claimant participated in the hearing. Michael Slone of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Jessica Henry and Deon Daye. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 15, 2005. He worked full time as a security officer at the employer's Cedar Rapids, Iowa area business client. His last day of work was July 6, 2006.

On July 6 the claimant was scheduled to work his regular shift from 11:00 a.m. to 3:00 p.m. and then continue on overtime until 7:00 p.m. However, approximately 2:30 p.m. he called his supervisor, Mr. Daye, and reported he was not feeling well, that he needed to get some medication, and that he wanted to leave. Mr. Daye allowed him to leave at approximately 4:00 p.m. The claimant was next scheduled to work the next day, July 7, from 7:00 a.m. to 7:00 p.m. The claimant did not report for work that day or any scheduled workday thereafter, and the employer has no record of the claimant making any contact. The employer considered the claimant to have abandoned his position as of July 14, 2006.

The claimant testified that on July 7 he had overslept and that at about 8:00 a.m. the overnight security officer he was supposed to have relieved called his phone and left a message asking where the claimant was. He further stated that he called the officer right back, but that the officer told him it was too late, that the claimant was fired. The claimant claimed he then went ahead and drove to the scale guardhouse at which he was supposed to be working, arriving at about 8:15 a.m., that the overnight officer was still there, and that he again told the claimant he should go home, that he was fired. The claimant asserted that he then left a written note with the officer at the gate for Mr. Daye to call him, that he made several calls to Mr. Daye's cell phone on both July 7 and July 8 with no answer, that he called the same overnight officer who had told him he was discharged on July 7 on the morning of July 8 and left a message for Mr. Daye, and that he had again called another officer on July 13 asking information as to how to get in touch with someone else with the employer, which that other officer declined to provide purportedly because the claimant was no longer employed and did not have a right to the contact information. He asserted he did not continue to try to reach anyone with the employer to ask about his job or to report any reason for being absent from work because he believed the overnight officer had the authority to discharge him, as he had six years seniority.

Mr. Daye testified that he had received a call from the overnight security officer on the morning of July 7 reporting that the claimant had not reported for duty. He further stated that he went personally to the scale guardhouse to relieve that officer and that he was there by at least 8:00 a.m. Mr. Daye indicated that there was no note from the claimant, nor did the claimant come to the scale guardhouse that morning. He denied there was any call from the claimant to him on his phone, nor any messages from the claimant. He reported that the officer who allegedly told the claimant he was discharged had no management or other authority and was simply a coworker to the claimant. The employer further asserted that if the claimant had any question as to his employment status, he could have contacted the employer's area office in Iowa City and spoken to Ms. Henry in human resources, whom he had previously contacted to inquire into a pay discrepancy issue. The employer maintained that even as of July 13 it was holding the claimant's position open for him and did not decide until July 14 that the claimant was not returning, so that no one would have told the claimant on July 13 that he was no longer employed.

The administrative law judge finds the version of events as stated by the employer to be more credible.

The claimant established a claim for unemployment insurance benefits effective July 9, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,024.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would be disqualified from unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

Where an individual mistakenly believes that he is discharged and discontinues reporting to work, but was never told by an authorized representative of the employer that he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

871 IAC 24.25 provides examples of situations which are considered to be voluntary quits without good cause, including:

871 IAC 24.25(27), (33) 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.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

While it is unfortunate that the employer did not present testimony or even a thirdhand statement from the overnight officer to whom the claimant claims he spoke the morning of July 7, 2006, overall the administrative law judge finds the employer's testimony regarding the occurrences of that day on to be more credible than the claimant's. The claimant's testimony was repeatedly inconsistent both with his own prior testimony during the hearing and with his written statement presented in preparation for the hearing, such as on whether he did or did not leave a voicemail message for Mr. Daye and as to when and how he supposedly left a message for Mr. Daye at the scale guard house. Further, the claimant testified that he continued to make attempts to contact Mr. Daye or another employer representative after July 7, both on July 8 and even July 13. This differs from the claimant's written statement, in which he makes no reference to continued efforts to communicate with the employer, but rather indicates he felt no further need to communicate with the employer because he had already been fired. Most disturbingly, the administrative law judge notes that in the claimant's sworn testimony he asserted that his first awareness of a problem was when he returned the message from the overnight officer who supposedly told him he was fired, that he went in to work anyway, and was again told by the same officer to go home, that he was fired. He said nothing in his testimony about seeing or hearing from Mr. Daye that morning. In contrast, in his written statement the claimant said nothing about receiving a call from the overnight officer, but rather indicated that when he awoke on July 7 and realized he had overslept, he quickly dressed and rushed to work, that upon arriving the overnight officer told him that Mr. Daye had said he was fired, and that "then Captain Daye drove up to the scale house and in a [rough] tone said Chris go home and nothing else and left." He said nothing in his written statement about leaving a note for Mr. Daye or leaving any other messages for him. Conversely, Mr. Daye testified without internal contradiction that he had been at the scale guard house on the morning of July 7 during the time the claimant alleged he had come there and that he had neither seen nor spoken to the claimant.

Inasmuch as the employer had not told the claimant he was fired and the claimant ceased reporting for work without determining the status of his employment relationship with the employer, he acted in a manner such that the employer would reasonably believe he had abandoned position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 28, 2006 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 9, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,024.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw