

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH J DAY

Claimant

APPEAL NO. 13A-UI-12365-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AQUA-CARE MARKETING LLC

Employer

OC: 10/06/13

Claimant: Respondent (2)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Aqua-Care, filed an appeal from a decision dated October 30, 2013, reference 01. The decision allowed benefits to the claimant, Jeremiah Day. After due notice was issued a hearing was held by telephone conference call on November 26, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Director Phillip Padilla and Room Supervisor Travis Moore.

ISSUE:

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

FINDINGS OF FACT:

Jeremiah Day was employed by Aqua-Care from November 29, 2012 until September 27, 2013, as a full-time telephone sales representative (TSR). His last day of work was Friday, September 20, 2013, when he was involved in a verbal disagreement with another employee over a confirmation of a sale. The disagreement ended with the two of them shaking hands and going back to work.

Mr. Day decided he would not return to work on Monday, September 23, 2013. He was considered a no-call/no-show to work because he texted his supervisor, Travis Moore, instead of calling as required. Human Resources Director Phillip Padilla, upon learning the claimant was absent, left him a voice mail to remind him he had to have a doctor's excuse for every day he missed due to illness. The claimant was no-call/no-show to work after that date.

Jeremiah Day has received unemployment benefits since filing a claim with an effective date of October 6, 2013. The employer did participate in the fact-finding interview.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer did establish the claimant was absent beginning September 23, 2013, and Mr. Day acknowledged he stopped calling in after that date. Whatever disagreement he may have had with a co-worker, he did not report it to the employer. In order for good cause attributable to the employer to exist, a claimant must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

It is evident the claimant is a highly excitable person with difficulty concentrating. He was unable to confirm the exact date on which his employment ended or why, if he intended to continue working, he did not continue to call in absent. He could not confirm why he did not attempt to get a leave of absence due to whatever emotional problems he was suffering or why he did not go to a doctor for excuses. He also did not rebut the employer's assertion he did not notify anyone of the alleged incident with his co-worker.

In addition, three days no-call/no-show to work is considered a voluntary quit without good cause attributable to the employer under the provisions of the above Administrative Code section.

The record establishes the claimant quit without good cause attributable to the employer and he is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met:

(1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of October 30, 2013, reference 01, is reversed. Jeremiah Day is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The claimant is overpaid \$2,037.00, and this must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs