

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON J KIRLIN
Claimant

APPEAL NO. 10A-UI-02730-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARIZONA LABOR FORCE INC
Employer

OC: 01/17/10
Claimant: Respondent (2-R)

Section 96.5(1) - Quit

STATEMENT OF THE CASE:

The employer, Arizona Labor Force, Inc., filed an appeal from a decision dated February 12, 2010, reference 01. The decision allowed benefits to the claimant, Jon Kirlin. After due notice was issued a hearing was held by telephone conference call on April 1, 2010. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Deanna Eddings.

ISSUE:

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

FINDINGS OF FACT:

Jon Kirlin was employed by Arizona Labor Force from March 10, 2008 until January 20, 2010 as a full-time customer service representative. His last day of work was Friday, January 15, 2010, and he was no-call/no-show to work after that date. He was sent a letter on January 20, 2010, notifying him the employer considered him a voluntary quit for job abandonment. Manager Dawn Herald has not received any contact from him even after the letter was sent. Continuing work was available to him had he returned to work.

Jon Kirlin has received unemployment benefits since filing a claim with an effective date of January 17, 2010.

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.

The claimant abandoned his job by failing to return to work after January 15, 2010. Continuing work was available to him had he come to work or contacted the employer about his absences. Because the claimant failed to participate in the hearing it is not known whether there were any extenuating circumstances to explain the job abandonment. The record establishes the claimant quit without good cause attributable to the employer and is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 12, 2010, reference 01, is reversed. Jon Kirlin is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs