

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ZACHARY OWENS
Claimant

APPEAL NO. 18A-UI-08395-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HGI LAKESIDE LLC
Employer

OC: 03/18/18
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 24, 2018, reference 05, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on June 16, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on August 28, 2018. Claimant Zachary Owens participated. Lucie Hengen-Reed represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 6 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Zachary Owens was employed by HGI Lakeside, L.L.C. as a part-time table games dealer from April 2018 until June 15, 2018, when he voluntarily quit by walking off the job in protest of not receiving a promotion he had applied. Mr. Owens left his shift early and without permission within minutes of his supervisor telling him he had received a promotion to a lower position than he had requested. Mr. Owens did not return to perform further work for the employer.

Mr. Owens did not report for subsequent shifts. On July 2, 2018, the employer deemed the employment done.

Mr. Owens established an original claim for benefits that was effective March 18, 2018 and reactivated the claim effective July 22, 2018. Mr. Owens received \$1,935.00 in benefits for the five weeks between July 22, 2018 and August 25, 2018. The employer is the sole base period employer, based on wages from a prior period of employment.

On July 23, 2018, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Owens separation from the employment. The employer had notice of the proceeding, but did not participate. During the fact-finding interview, Mr. Owens provided statements that were intentionally misleading.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Owens voluntarily quit the employment on June 15, 2018, by walking off the job prior to the end of his shift because he was upset he did not get the promotion he had sought. The weight of the evidence does not support Mr. Owens' assertion that he was sick thereafter or that he provided appropriate notice of his need to be absent from subsequent shifts. Mr. Owens testimony regarding these matters was not credible. Mr. Owens voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Owens is disqualified for benefits until he has worked in and been paid wages

for insured work equal to ten times his weekly benefit amount. Mr. Owens must meet all other eligibility requirements.

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 base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Owens received \$1,935.00 in benefits for the five weeks between July 22, 2018 and August 25, 2018, but this decision disqualifies him for those benefits. Accordingly, the benefits Mr. Owens received constitute an overpayment of benefits. Though the employer did not participate in the fact-finding interview, the evidence indicates that Mr. Owens made intentionally misleading statements at the fact-finding interview. Accordingly, Mr. Owens must repay the benefits. The employer's account shall be relieved of liability for benefits for the period beginning July 22, 2018.

DECISION:

The July 24, 2018, reference 05, decision is reversed. The claimant voluntarily quit the employment on June 15, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,935.00 in benefits for the five weeks between July 22, 2018 and August 25, 2018. The claimant must repay the overpayment. The employer's account shall be relieved of liability for benefits for the period beginning July 22, 2018.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs