

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW R MARSH**  
Claimant

**APPEAL NO. 11A-UI-02823-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STEWART DELL INC**  
Employer

**OC: 01/23/11  
Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 4, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2011. Claimant participated. Employer participated by Deb Heath, Office Manager and Steve Stewart, President. Exhibits

**ISSUE:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 10, 2010. Claimant drove truck for the employer. Claimant decided he did not want to make a run. Claimant dropped the truck and called a coworker to take the run. The coworker did not show to take the run. Claimant did not contact or text employer concerning the location of the truck. Employer had to chase claimant down to find the truck. Employer was unaware of the truck's location for 36 hours. Claimant had failed to report for work two prior times. Claimant was told that one more no show and he would lose his job.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because claimant stopped coming to work without notice to employer. Claimant's abandoning of the truck is indicative of job abandonment. The prior warnings weigh heavily toward a finding that claimant left work without notice on December 9, 2010. Claimant had an obligation to notify employer of the truck's location and status. Claimant failed in that responsibility. This is a quit without good cause attributable to employer. Benefits withheld.

Iowa Code § 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 next issue concerns an overpayment of unemployment insurance benefits.

Iowa Code § 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.

This matter is remanded to the claims section for determination of an overpayment.

**DECISION:**

The decision of the representative dated March 4, 2011, reference 02, is reversed and remanded for determination of overpayment. Unemployment insurance benefits are withheld

until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to claims section for determination of overpayment.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs