

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL ALOUNG**  
Claimant

**APPEAL NO: 11A-UI-04100-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOMESTEAD LIVING/LEARNING CTR**  
Employer

**OC: 02-20-11**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 22, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 25, 2011. The claimant participated in the hearing. LuAnn Markley, Operations Director, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time autism associate for The Homestead from May 9, 2006 to February 9, 2011. He went on FMLA December 29, 2010, for a non-work-related knee injury. He told the employer he had a doctor's note releasing him to return to work January 3, 2011, but did not provide it to the employer. The claimant did not work between January 3, 2011, and January 18, 2011, when the employer requested the note from the claimant's physician and received a faxed copy. However, by that time the claimant was seeing a different physician and told the employer January 18, 2011, he was going to have knee surgery February 15, 2011. The employer next spoke to the claimant January 26, 2011, and told him he and his new physician needed to complete new FMLA documentation because he had a new doctor and needed to requalify. It also told him his new physician needed to list the claimant's restrictions because he could not return to work if he had restrictions. The employer told him it needed him to complete the information by January 28, 2011. The claimant failed to provide the new FMLA documentation by January 28, 2011, and never contacted the employer again, even though the employer tried to contact the claimant and left messages for him after that date.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant started FMLA December 29, 2010, but had not provided a doctor's release stating he could return to work January 3, 2011, which forced the employer to eventually contact his stated physician and have his office fax a work release to the employer January 18, 2011. At that time the claimant informed the employer he had a new doctor and would be having surgery February 15, 2011. The employer told him January 26, 2011, he would need to provide updated FMLA paperwork completed by him and his new physician and needed to get the employer that information by January 28, 2011. The claimant did not respond and did not contact the employer again, despite the fact the employer tried to call him and left him repeated messages about the situation. The claimant's actions in failing to provide the required FMLA information or contact the employer evince an intent to quit his job. If he wished to remain with the employer he needed to provide the information requested or at least contact the employer and tell it why he was unable to do so in the timeframe given by the employer. Consequently, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

## **DECISION:**

The March 22, 2011, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and

whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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