

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW S CRABTREE
Claimant

APPEAL NO. 07O-UI-11196-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIXTH AVE HOTEL PARTNERSHIP
Employer

OC: 11/19/06 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 1, 2007, reference 04, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 18, 2007. Although duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Kathy Albaugh, Human Resources Director, Tom Goodman, Director of Operations, and Terry Logan, Sous Chef.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the 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: The claimant worked for this employer from December 8, 2006 until September 5, 2007 when he voluntarily quit employment. Mr. Crabtree was employed as a full-time cook. His immediate supervisor was Michael South.

On September 5, 2007, the claimant was scheduled to work, but instead reported early and dropped his uniforms and removed his personal cutlery utensils and left the premises. Although the claimant was scheduled to work for three or more consecutive workdays thereafter, he did not report and provided no notification to the employer. The company's Sous chef, a personal friend of the claimant as well as another cook had left the preceding day. Work continued to be available to the claimant and the claimant had not been informed in any manner that his employment was in jeopardy or that he should not continue working.

REASONING AND CONCLUSIONS OF LAW:

The issue before the administrative law judge is whether the evidence establishes that the claimant voluntarily quit employment for reasons that were attributable to the employer. It does not. The evidence in the record establishes that the claimant was scheduled to work on September 5, 2007 and thereafter but chose instead to quit his employment by discontinuing to work. The evidence in the record establishes an intention to sever the employment relationship by an overt act of returning his work uniforms, retrieving his personal property and leaving the premises. The claimant also failed to call or return to work although continuing work was available to him.

The claimant has the burden of establishing that a voluntary quit was for good cause. Iowa Code section 96.6-2. Mr. Crabtree did not respond to the notice of hearing and has provided no evidence or testimony.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily quit employment without a good cause for reasons that are not attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa.

DECISION:

The unemployment insurance fact-finder's decision dated October 1, 2007, reference 04, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing he is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,198.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs