

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**WALTER L BAPTISTE
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**Appeal Number: 06A-UI-01469-S2T
OC: 01/15/06 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Iowa State University (employer) appealed a representative's January 31, 2006 decision (reference 01) that concluded Walter Baptiste (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2006. The claimant participated personally. The employer participated by Marlene Burkheimer, Human Resources Specialist; Paul Haggard, Manager of Custodial Services; and Peter Gagne, Investigator. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 12, 2004, as a full-time custodian 1. The employer has a policy that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer.

The claimant had a drug problem and sought treatment at Mary Greeley Hospital in October 2005. He returned to work in November 2005. On November 10, 2005, the claimant was intoxicated while at work. The employer had campus security come to the site. Campus security found drug paraphernalia in the claimant's pockets and the claimant was exhibiting signs of being under the influence of some form of drug. Campus security issued the claimant a citation, told him that he should not be at work that day and gave the claimant a ride home. The claimant did not return to work on November 11, 14 or 15, 2005. He did not notify the employer of his absence. On November 15, 2005, the employer sent the claimant a letter informing the claimant he was presumed to have quit due to his absence without notice for three days. The claimant did not respond to the letter. Continued work was available had the claimant not resigned.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the employer's testimony to be more credible because the two employer witnesses were in agreement. In addition, the inconsistency in testimony was regarding an incident that occurred while the claimant was intoxicated.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for three days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

The claimant has received benefits in the amount of \$1,220.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 31, 2006 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,220.00.

bas/s