

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHERY BUTRICK
Claimant

APPEAL NO: 13A-UI-05738-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 04/28/13
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 May 13, 2013, 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 June 20, 2013. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Tom Buss, District Manager; Mitchell Wolfgram, General Manager; April Maybe-Barr, Shift Leader; and Jeff Oswald, Employer Representative, 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 part-time crew member for Hardees from July 1, 2012 to April 14, 2013. The claimant had an argument with a co-worker regarding the division of labor April 14, 2013. The claimant approached Shift Leader April Maybe-Barr at the front counter and wanted to speak to her right away but she told him he would have to wait a few minutes until she was done waiting on customers. The claimant turned around, took his uniform shirt off, threw that and his work hat into the office, walked up front, clocked out and walked out the door. The employer's handbook states that leaving a shift without permission shall be considered a voluntary leaving of employment.

Ms. Maybe-Barr gave the claimant 15 minutes to cool off and return to work but did not hear from him again until he sent her a text message around midnight asking if she was mad at him and whether he still had a job. Ms. Maybe-Barr told him he would need to speak to General Manager Mitchell Wolfgram Monday but the claimant never called Mr. Wolfgram or stopped by to ask about the status of his employment.

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 became upset with a co-worker and when Ms. Maybe-Barr could not give him immediate attention because she was dealing with customers, the claimant ripped his uniform shirt off, threw it and his hat in the office, clocked out and left. Ms. Maybe-Barr allowed him 15 minutes to change his mind but the claimant did not do so, nor did he show up or call Mr. Wolfgram the following Monday and the employer accepted his resignation. The claimant has not provided any evidence that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. 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 May 13, 2013, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs