

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYLER S WRIGHT**  
Claimant

**ASPEN AIRE INC**  
Employer

**APPEAL 19A-UI-08617-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/29/19  
Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On November 1, 2019, Aspen Aire Inc. (employer) filed an appeal from the October 24, 2019 (reference 02) unemployment insurance decision that determined Tyler Wright (claimant) was eligible to receive unemployment insurance benefits. Specifically, the fact-finder determined claimant was discharged; the employer failed to furnish any information to the contrary; and there was no evidence of willful or deliberate misconduct by claimant.

A telephone hearing was held on November 25, 2019. The parties were properly notified of the hearing. Employer participated by Manager Craig Spring. Claimant did not register a phone number at which he could be reached for the hearing and did not participate in the hearing.

Employer's Exhibit 1 and 2 were admitted. Administrative notice was taken of claimant's payment history on the unemployment insurance system.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits?
- III. Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time replacement installer's helper beginning September 16, 2018. Spring was his direct supervisor. His employment ended on January 9, 2019, when he informed Spring he was quitting. Exhibit 1, 2.

The week prior to claimant's quitting had been slow for the business due to unusually mild weather, and he had worked sparingly. Claimant texted Spring on several occasions in early January, asking when work would be available and expressing frustration with the lack of work. On January 8, Spring informed claimant that he had found work for him with a new construction installer beginning the next day. That position would have kept claimant busy. It is generally understood in the industry that the weather and the ebb and flow of jobs can lead to fluctuation in work hours from day to day. The administrative law judge finds claimant quit at least in part due to frustration with the lack of hours in early January 2019.

The administrative law judge finds claimant did not have a job offer in hand when he voluntarily quit his position with employer. Claimant informed Spring prior to his quitting that he was pursuing two potential positions: a building automation systems specialist position and a welder position. He also informed Spring he had another interview and job test, strongly indicating he had not yet been offered a position.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$481.00 for a total of seven weeks, beginning the week of October 5, 2019 and continuing to present. The total amount of benefits paid to date is \$3,367.00.

Michelle Brugioni provided a statement at the fact-finding hearing on behalf of employer. The employer's statement indicates claimant quit to take another job. However, Brugioni noted there was no record of a written resignation; stated she was unsure if claimant had been laid off; and acknowledged the previous office manager did not keep good records.

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

For the reasons set forth below, the October 24, 2019 (reference 02) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

- a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

Employer has carried its burden of showing claimant's departure from employment was voluntary. However, claimant has failed to carry his burden of proving his quitting was for good cause attributable to the employer. To the extent claimant quit because of the inconsistent nature of his employment, he was or should have been aware of that when he took the position. If an employee is aware of a condition such as that when he accepted employment, it cannot form the basis of good cause for a later quit. Furthermore, there was consistent work offered to claimant prior to his decision to voluntarily quit. This undercuts any argument claimant may have that his quitting was due to a lack of work.

The administrative law judge also finds claimant did not voluntarily quit for the sole purpose of accepting an offer of other or better employment. Claimant quit at least in part due to frustration with the lack of hours in early January 2019. Therefore, claimant's quitting was not solely due to the promise of other or better employment but motivated to some extent by the inconsistent nature of his employment, which he was or should have been aware of when he took the position. Furthermore, Claimant did not have a job offer in hand when he voluntarily quit his position with employer. Because there was no job offer for him to accept at the time of his quitting, he cannot be found to have quit solely for the purpose of accepting a job offer.

II. Was the claimant overpaid benefits?

Iowa Code section 96.3(7) provides, in pertinent part:

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) (a) 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.

(b) 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 unemployment insurance system shows claimant has received weekly benefits in the amount of \$481.00 for a total of seven weeks, beginning the week of October 5, 2019 and continuing to present. The total amount of benefits paid to date is \$3,367.00. Because this administrative law judge now finds claimant was ineligible, he has been overpaid benefits in the amount of \$3,367.00.

III. Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

Michelle Brugioni provided a statement at the fact-finding hearing on behalf of employer. The employer's statement indicates claimant quit to take another job. However, Brugioni noted there

was no record of a written resignation; stated she was unsure if claimant had been laid off; and acknowledged the previous office manager did not keep good records.

The administrative law judge finds employer failed to participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10. Employer did not provide at the fact-finding hearing "detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer." Employer did not offer a representative with direct knowledge of the facts and circumstances of claimant's separation from employer. Employer was unable to say for sure whether claimant had resigned or been laid off, and acknowledged a lack of good record-keeping. Because of this, the fact-finder determined employer failed to demonstrate that claimant had quit, and therefore found claimant eligible to receive benefits.

Because employer failed to participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant.

**DECISION:**

The October 24, 2019 (reference 02) unemployment insurance decision is reversed. The claimant voluntarily quit without good cause attributable to employer. Claimant was overpaid benefits in the amount of \$3,367.00. However, claimant is not required to repay this overpayment of benefits due to employer's failure to participate in the fact-finding interview.

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Andrew B. Duffelmeyer  
Administrative Law Judge

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Decision Dated and Mailed

abd/scn