

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D REYNOLDS
Claimant

APPEAL NO. 10A-UI-06575-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 03/28/10
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 20, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 22, 2010. Employer participated by Dan O'Brien, human resources business partner. The claimant did provide a telephone number at which he could be reached, but when that number was dialed, voice mail picked up. The administrative law judge left the claimant a detailed message on how to participate in the hearing. The claimant did not call in prior to the closing of the record. The record consists of the testimony of Dan O'Brien and Employer's Exhibits 1-3.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a distribution center located in Cedar Falls, Iowa. The claimant was hired on August 20, 2007, as a full-time warehouse worker. The claimant's last day of actual work was November 6, 2009. He then went on a paid leave of absence for a medical condition from November 10, 2009, through March 15, 2010. He was released to return to work on March 16, 2010. He was scheduled to return to work on March 20, 2010.

The claimant called in sick on March 20, 2010; March 21, 2010; and March 22, 2010. The employer left the claimant voice mails on March 22, 2010, and March 26, 2010, asking about his status. The claimant did not respond to these voicemails. The claimant was then scheduled to work on March 27, 2010; March 28, 2010; and March 29, 2010. He was a no call/no show on all three of these days.

The employer has a written policy, which states that if an employee is a no call/no show for three consecutive work days, this is considered job abandonment. The effective day of the claimant's voluntary quit was March 30, 2010. The claimant was aware of the employer's written policy as it is contained in the employee handbook, which was given to the claimant on August 20, 2007. (Exhibits 1 and 2) Work was available for the claimant at the time he abandoned his job.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of employment. The claimant was a no-call/no-show for three consecutive work days. The employer had a written policy, of which the claimant was aware, that if there was a no-call/no-show for three consecutive work days, that the employee was considered to have abandoned his job and voluntarily quit. The claimant did not participate in the hearing and his reasons for not calling or reporting to work are unknown. The claimant intended to sever the

employment relationship and did so by failing to come to work or explain his absence. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

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) 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. 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 employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated April 20, 2010, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs