

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RILEY A KELLEY**  
Claimant

**COUNTRY LANDSCAPES INC**  
Employer

**APPEAL 17A-UI-12366-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/05/17  
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
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:**

The employer filed an appeal from the November 28, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 22, 2017. The claimant did not participate. The employer participated through Rhett Faaborg. Employer's Exhibit 1 was received into evidence. Official notice was taken of claimant's monetary record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a landscaper from April 3, 2017, until this employment ended on October 25, 2017, when he voluntarily quit. The last day claimant worked was October 24, 2017. Claimant left work that day and never returned. The employer's policies provide for separation after one no-call/no-show. (Exhibit 1). Claimant made no further attempts to contact the employer. Faaborg testified claimant had not recently been disciplined, that he was not aware of any issues the claimant was having at work, and was not sure why he never returned. Had claimant not resigned, work would have continued to be available to him.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 5, 2017. The claimant has not received any benefits to date. The employer did not participate in a fact finding interview regarding the separation on November 27, 2017. The fact finder determined claimant qualified for benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code §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.

Iowa Admin. Code r. 871-24.25(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 § 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 § 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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Here, the employer does not have a no-call/no-show policy that complies with the statute, however, claimant's decision to leave work and failure to continue reporting to work was nevertheless an abandonment of the job. The claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied. As no benefits have been paid to date, the issues of overpayment and participation are moot.

**DECISION:**

The November 28, 2017, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs