

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL BURRIS

Claimant

APPEAL NO. 09A-UI-08702-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST ADVANTAGE MEMBERSHIP

Employer

OC: 09/14/08

Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

First Advantage Membership filed an appeal from a representative's decision dated June 11, 2009, reference 09, which held that no disqualification would be imposed regarding Michael Burris' separation from employment. After due notice was issued, a hearing was held by telephone on July 2, 2009. Mr. Burris participated personally. The employer participated by Michelle Treadway, Assistant Cost Center Manager, and Chad Bennett, Human Resources Director.

ISSUE:

At issue in this matter is whether Mr. Burris was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Burris began working for First Advantage Membership on December 15, 2008 as a full-time customer service representative. His last day of work was January 9, 2009. He did not report for work or contact the employer at any point thereafter. The employer attempted to reach him by telephone but was unable to do so. A letter was sent to him on January 15 but the employer received no response. The employer has a policy which provides that three consecutive unreported absences will be considered a voluntary quit. Continued work would have been available if Mr. Burris had continued reporting for work.

Mr. Burris filed an additional claim for job insurance benefits effective April 19, 2009. He has received \$316.00 in benefits for each of the 11 weeks ending July 4, 2009. A portion of the benefits were used to offset against a prior overpayment and a portion was paid directly to him.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Burris abandoned his job when he stopped reporting for available work with no notice to the employer. An individual who leaves

employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). An individual who is absent for three consecutive days without notice in violation of a known work rule is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(4). Mr. Burris has failed to provide evidence that would overcome the presumption.

Mr. Burris contended that he was told by a company representative in Florida that there were questions regarding his background check and that he was to remain off work until called. The administrative law judge did not find this contention credible. If he was waiting for a call about returning to work, one would have to question why the employer was unable to reach him by phone after January 9.

For the reasons cited herein, the administrative law judge concludes that Mr. Burris voluntarily quit his employment without good cause attributable to the employer. As such benefits are denied. He has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment.

As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 11, 2009, reference 09, is hereby reversed. Mr. Burris quit his employment for no good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Burris will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs