

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH B HILL**  
Claimant

**APPEAL NO. 10A-UI-13604-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DALJIT KAUR**  
**SUBWAY**  
Employer

**OC: 08/22/10**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Daljit Kaur, doing business as Subway, filed a timely appeal from an unemployment insurance decision dated September 24, 2010, reference 01, that allowed benefits to Joseph B. Hill. After due notice was issued, a hearing was held in Des Moines, Iowa on October 27, 2010 with Ms. Kaur participating and being represented by John P. Roehrick, Attorney at Law. Employer Exhibit One was admitted into evidence. The claimant did not respond when paged at the time of the hearing and again prior to the closing of the record. The administrative law judge takes official notice of Agency benefit payment records.

**ISSUE:**

Did the claimant leave work with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Daljit Kaur purchased the Subway Restaurant on Merle Hay Road in Des Moines on November 23, 2009. Joseph B. Hill was already employed at the restaurant and stayed on, last working on August 16, 2010. He was a sandwich artist and shift supervisor, a part-time position. Mr. Hill last worked on August 16, 2010. August 17, 2010 was his day off. He was absent due to illness on August 18, 19 and 20, 2010. He returned to the business on the afternoon of August 20, 2010 saying that he was well enough to resume working. Since he was not dressed in the required uniform, Ms. Kaur told him to return beginning Saturday, August 21. Mr. Hill stated that he would return his uniforms and pick up his final paycheck on Monday, August 23, 2010. He dropped off his keys to the business on the evening of August 20, 2010 and, as promised, returned his uniforms and picked up his paycheck on August 23. Further work was available had he not resigned.

Mr. Hill has received unemployment insurance benefits since filing a claim effective August 22, 2010.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant left work with good cause attributable to the employer. It does not.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. As noted above, the claimant did not participate in the hearing. The employer's evidence has not been contradicted. The administrative law judge finds the evidence to be consistent and plausible. It establishes that the claimant voluntarily left employment when further work was available. The evidence does not establish that Mr. Hill left employment with good cause attributable to the employer. Benefits are withheld.

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 question of whether the benefits the claimant has received must be repaid is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated September 24, 2010, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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