

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN A ZAHRADNIK**  
Claimant

**APPEAL NO. 07A-UI-08563-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORDSTROM INC**  
Employer

**OC: 07/22/07 R: 03**  
**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Nordstrom, Inc. (employer) appealed a representative's August 28, 2007 decision (reference 01) that concluded Dustin A. Zahradnik (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2007. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Peg Heenan of TALX Employer Services appeared on the employer's behalf and presented testimony from three other witnesses, Barry Wilson, James Jungjohann, and Shannon Chapman. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 15, 2006. He worked full time as a third shift replenisher in the employer's Cedar Rapids, Iowa warehouse facility. The normal work schedule was 11:00 p.m. to 7:30 a.m., Sunday night through Friday morning. His last day of work was the shift that ended the morning of July 23.

Prior to the 11:00 p.m. shift on July 23 the claimant came to the office of Mr. Wilson, the then third shift assistant manager, and asked to talk. The claimant explained that he was not going to be continuing his employment with the employer as he had accepted a job with another employer, Pespí. Mr. Wilson inquired as to whether the claimant's acceptance of a new job had anything to do with the fact that the claimant had left his shift early that morning, clocking out at 5:07 a.m. and leaving without notifying a member of the team. The claimant responded that the fact he had been offered a new job had a little to do with his leaving, but that he primarily had left because he was not happy with persons from other departments being in his way that morning. He did not explain why he had not notified a member of the team.

Mr. Wilson asked the claimant to sign an attendance warning notice for one point for leaving work early (at 3:00 a.m.) on the morning of July 18, which the claimant did sign. This placed the claimant at 7.25 points, still below the attendance discharge level of 8.0. Mr. Wilson had previously discussed the claimant's leaving early on the morning of July 18 when the claimant had come in for his shift on the evening of July 18; the claimant had at that point explained that the reason he had left at 3:00 a.m. was that he had just gotten a call that his grandmother had died. Mr. Wilson expressed condolences and offered bereavement leave, but also reminded the claimant of the need to notify a team member if he was leaving early. There had not yet been an attendance warning generated for the claimant's leaving early on the morning of July 23, but he would have been given an additional .25 point, which would have brought him to 7.5 points, still below the 8.0 discharge level. The claimant's job was still available to him as of July 23 had he chosen to continue in his employment at that time.

The claimant and Mr. Wilson did not discuss when the claimant's new job was to begin, but Mr. Wilson asked the claimant if he was going to go ahead and work his shift that night, and the claimant declined. As a result, after signing the paperwork on the prior attendance warning, Mr. Wilson took the claimant's keycard and escorted the claimant from the building. Later that week, on either July 26 or July 27, the claimant came into the employer's offices during the day and spoke to Mr. Jungjohann, a stock control manager. Mr. Jungjohann asked the claimant how the new job was going, and the claimant responded that it was going well; he explained to Mr. Jungjohann that he had come in to see about rolling over his pension benefits to his new employer. Mr. Jungjohann referred the claimant to human resources, who gave the claimant the contact information for the employer's third-party pension administrator company.

The claimant established a claim for unemployment insurance benefits effective July 22, 2007. Agency records do not reflect any new employment after the employment from this employer. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,384.00.

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

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting employment for new employment is not normally disqualifying as to the claimant, but here the claimant has not established that he in fact quit for new employment. He established his claim and began drawing benefits virtually

immediately upon ending his employment with the employer. If he did end his employment to begin a new job, he has not been reporting his wages from his new job which would have been offset against any eligibility he may have had. If he ended his employment to begin some new occupation other than regular covered employment, such as self-employment, a quit for that reason is disqualifying. 871 IAC 24.25(19). The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

There is some evidence that the claimant was earning income from another employer that should have been reported to reduce his benefits and the failure to report could be due to fraud. This is a matter not included on the notice of hearing, and the administrative law judge is without jurisdiction to make a ruling on the issue. This matter is remanded to the Investigations and Recovery Section to determine if the claimant was earning wages during claim weeks which he failed to report.

**DECISION:**

The representative's August 28, 2007 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 23, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,384.00. The matter is remanded to the

Investigations and Recovery Section for investigation and determination of the potential unreported wage issue.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css