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

**HAMID BRAHIMI**
Claimant

**ALLSTEEL INC**
Employer

**APPEAL NO.  10A-UI-13946-HT**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC:  01/24/10
Claimant:  Respondent  (2-R)**

Section 96.5(1) – Quit

### STATEMENT OF THE CASE:

The employer, Allsteel, filed an appeal from a decision dated September 29, 2010, reference 01.  The decision allowed benefits to the claimant, Hamid Brahimi.  After due notice was issued, a hearing was held by telephone conference call on November 22, 2010.  The claimant participated on his own behalf.  The employer participated by Community Relations Manager Doug Baker and was represented by Employers Edge in the person of Sandy Linsin. Exhibit One admitted into the record.

### ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

### FINDINGS OF FACT:

Hamid Brahimi was employed by Allsteel from March 7, 2005 until August 5, 2010 as a full-time machine operator.  On April 4, 2010, he requested a leave of absence from June 30 to August 2, 2010.  This was approved and he received a copy of the form with the supervisor's approval.

Mr. Brahimi was no-call/no-show to work August 2, 3, and 4, 2010, and was considered a voluntary quit at that time.  The company policy, which the claimant received, does notify employees they will be considered a voluntary quit if they are no-call/no-show to work for three days.  In addition, the form the claimant filled out specifically states failure to return from a leave of absence at the scheduled time is also considered a voluntary quit.

Mr. Brahimi believed he had requested a change in his return date, but there were no records to indicate such a request was made in writing prior to his leaving, or that any such request was approved.

Hamid Brahimi has received unemployment benefits since filing an additional claim with an effective date of August 8, 2010.

**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.

The claimant did not return from his approved leave of absence on the day he was scheduled to come back to work. The fact the claimant thought he had been approved for a longer leave has not been established. He was no-call/no-show for three days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of September 29, 2010, reference 01, is reversed. Hamid Brahimi is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.


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Bonny G. Hendricksmeyer
Administrative Law Judge


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Decision Dated and Mailed


bgh/kjw