

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN DEWISPELAERE**

Claimant

**APPEAL NO. 14A-UI-11511-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**

Employer

**OC: 10/05/14**

**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

APAC Customer Services, Inc. filed a timely appeal from a representative's decision dated October 28, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 10, 2014. Although duly notified, the claimant did not participate. The employer participated by Ms. Turkessa Newsone, HR Generalist; Tammi Martin, Operations Manager; and Lisa Kubot, TALX Representative.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: John Dewispelaere was employed by APAC Customer Services, Inc. from January 29, 2013 until October 3, 2014 when the claimant quit his job by failing to report for scheduled work for three consecutive work days without providing notice to the employer. Mr. Dewispelaere was employed as a full-time customer service representative and was paid by the hour. His immediate supervisor was Brittany Bringols.

The claimant last reported for scheduled work on Monday, September 29, 2014. Mr. Dewispelaere left to go to lunch that day and did not return. Claimant did not have authorization to leave work and had not requested permission. After the claimant had not reported back to work the next working day, he was contacted by APAC Customer Services, Inc. on October 1 and at that time stated he was "waiting for a call from Human Resources." The employer verified with the Human Resource Department that there were no reasons for the claimant to be awaiting a call from their department and the claimant was informed of this. When Mr. Dewispelaere did not report for work on October 1 or October 2 and had not provided notice in advance of the beginning of his work shift that he would be absent,

the employer considered that he had voluntarily relinquished his position with the company. Company policy states that an employee who does not report for work or provide notification for three consecutive work days is considered to have voluntarily quit. Claimant was aware of the company policy through the company handbook that had been provided to him.

The employer was unable through no fault of their own to participate in the fact finding due to agency error. Although it was the employer's intention to participate in the fact finding in this matter, TALX UCM Services, Inc. the designated recipient of official correspondence, was not provided notice of the fact-finder's call and, therefore, could not participate.

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

For the reasons that follow the administrative law judge concludes the claimant voluntarily left employment 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 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.

An employer is entitled to expect employees to report for work as scheduled or be notified when and why the employee is unable to report for work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer and benefits are withheld.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$2,452.00 since filing a claim with the effective date of October 5, 2014 for the weeks ending October 11, 2014 through December 6, 2014. The administrative record also establishes that the employer was unable to participate in the fact-finding interview because of agency error. The employer was not provided proper notice of the fact-finding interview and, therefore, was unable to participate through no fault of their own.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused

absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer’s representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) “Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant’s separation was disqualifying, benefits were paid to which he was not entitled. The Unemployment Insurance Law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or misrepresentation by the claimant, and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged benefits if it is determined that they did participate in the fact-finding interview. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer was not provided notice of the fact-finding interview through no fault of their own and due to agency error, the claimant is obligated to repay to the agency the benefits he received and the employer’s account shall not be charged in this instance.

**DECISION:**

The representative's decision dated October 28, 2014, reference 01, is reversed. The claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The claimant has been overpaid job insurance benefits in the amount of \$2,452.00 and is liable to repay that amount. The employer's account shall not be charged as the employer was unable to participate in the fact-finding interview due to agency error.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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