

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY D ANDERSON
Claimant

APPEAL NO. 13A-UI-08558-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMOUS DAVE'S RIBS INC
Employer

OC: 06/23/13
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for
non participation at Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 15, 2013, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 28, 2013. Employer participated by Marty Out, Barnett Hearing Representative with witnesses Staci Cirksema, General Manager and Christopher Gerst, Assistant Manager. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 11, 2012. Claimant failed to call in or report for work on that last day. Claimant had four prior late arrivals to work on his record. Employer had warned claimant about his absenteeism. Employer deemed claimant to have quit after two or three no call absences. About a week later claimant asked for his job back. Claimant indicated he was going through some personal issues. Employer did not participate at the fact-finding interview. The hearing notice did not indicate the issue of employer chargeability for non participation.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he stopped coming to work. This is job abandonment. This is a quit for personal reasons. Benefits withheld.

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 next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Claimant's overpayment is waived because employer did not participate at fact finding.

Since the issue was not properly listed on the hearing notice employer's chargeability cannot be determined. This matter is remanded to determine the amount of charges made to employer's account based on failure to participate at fact finding.

DECISION:

The decision of the representative dated July 15, 2013, reference 01, is reversed and remanded for determination of employer's account charges and whether employer participated at fact finding held after July 1, 2013. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant's overpayment is waived.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs