

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PRINCETON A WEBB

Claimant

APPEAL NO. 13A-UI-01758-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K&M JANITORIAL SERVICES INC

Employer

OC: 12/30/12

Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, K&M Janitorial Services, Inc. (K&M), filed an appeal from a decision dated February 4, 2013, reference 08. The decision allowed benefits to the claimant, Princeton Webb. After due notice was issued, a hearing was held by telephone conference call on March 13, 2013. The claimant participated on his own behalf. The employer participated by President Keith McCay.

ISSUE:

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

FINDINGS OF FACT:

Princeton Webb was employed by K&M from September 13 until December 28, 2012 as a full-time janitor. He was scheduled to work from 6:00 a.m. until 2:00 p.m. Workers are to arrive at the company office, pick up a company vehicle and then report to the work site.

Mr. Webb's last day of work was Monday, December 24, 2012. He was no-call/no-show to work the next scheduled day on December 26, 2012, and no one reported to the client's building to do the cleaning. President Keith McCay called the claimant around 9:00 a.m. and was told he was not at work because his ride did not show up to take him to the office.

Around 9:30 p.m. that same evening Mr. Webb texted Mr. McCay to say he would be in the next day but he did not show up. The crew waited for him at the office on December 27, 2012, then went to the job site without him. Mr. Webb did not contact the employer at all that day.

The claimant came to the office around 2:00 p.m. on Friday, December 28, 2012, to get his paycheck and asked if he still had a job. Mr. McCay said he did not.

Princeton Webb has received unemployment benefits since filing a claim with an effective date of December 30, 2012.

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 was no-call/no-show to work for three days December 26, 27 and 28, 2012. Calling in or showing up at the office hours after the scheduled start time is not a properly reported absence. The absences were due to lack of transportation which would not have been an excused absence in any event. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984).

The record establishes the claimant is a voluntary quit without good cause attributable to the employer by operation of law. He 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 February 4, 2013, reference 08, is reversed. Princeton Webb is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css