

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY D ELIFRITZ**  
Claimant

**APPEAL NO. 13A-UI-12141-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LA LEASING  
SEDONA STAFFING**  
Employer

**OC: 09/29/13  
Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

The employer, Sedona Staffing, filed an appeal from a decision dated October 22, 2013, reference 02. The decision allowed benefits to the claimant, Jeremy Elifritz. After due notice was issued a hearing was held by telephone conference call on November 13, 2013. The claimant participated on his own behalf. The employer participated by Account Manager Julie White and Risk Administrative Assistant Maria Mays.

**ISSUES:**

The issues are whether the claimant quit work with good cause attributable to the employer, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Jeremy Elifritz was employed by Sedona from February 9, 2007 until July 12, 2013. His last assignment began on March 1, 2013, at PPG.

On July 11, 2013, the claimant was absent from work without calling in. Account Manager Julie White contacted him in the afternoon to ask about the situation. He explained the police had come to his house because his girlfriend's ten-year-old son had broken into a neighbor's house the night before. She lives with Mr. Elifritz and his 12-year-old son and watches both children while he is at work. He said he was not sure if he would be able to work the next day because his girlfriend might not be able to watch his son because she might be held responsible for her son's conduct. Ms. White told him he was accumulating too many attendance points and might be discharged and informed him to call both her and the client company the next day if he was unable to come to work.

On July 12, 2013, the claimant was no-call/no-show to work. His cell phone had been turned off and he did not make any attempt to find another phone he could use to call in. The employer considered him a voluntary quit for job abandonment under the company policy.

Jeremy Elifritz has received unemployment benefits since filing a claim with an effective date of September 29, 2013. At the fact-finding interview the employer participated by submitting a document which merely stated the claimant was considered a voluntary quit for being no-call/no-show without giving any details as to dates and times. Phone numbers were provided should the fact-finder require more information. The number was dialed and a message was left but no one on behalf of Sedona responded to the message.

### **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(17) 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:

- (17) The claimant left because of lack of child care.

The claimant is considered a voluntary quit because he was no-call/no-show to work and was unable to work because of lack of child care. 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.

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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The employer did not participate in the fact-finding interview as there was insufficient information in the documentation to support a conclusion of a voluntary quit. The employer did not respond to the fact-finder's message to provide additional information when requested.

**DECISION:**

The representative's decision of October 22, 2013, reference 02, is reversed. Jeremy Elifritz 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 claimant is not required to repay the overpayment and the employer is charged for the amount of the overpayment because the employer failed to participate in the fact-finding interview.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs