

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER D CRIPPEN
Claimant

APPEAL NO. 08A-UI-02928-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION ATLANTIC ENTERPRISES LLC
Employer

**OC: 02/24/08 R: 03
Claimant: Respondent (2)**

Section 96-5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 17, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 9, 2008. Although duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Kelly Harris, branch manager. Employer's Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer as a production worker assigned to work at the General Mills facility beginning December 10, 2007. Mr. Crippen was paid by the hour. The claimant abandoned his job with Spherion Atlantic Enterprises when he failed to report for scheduled work and did not notify the employer as required for three consecutive days on February 10, February 11, and February 12, 2008. The claimant was aware of his obligation to provide notification to the employer to report impending absences but did not do so. Work continued to be available to the claimant at the time that he chose to discontinue reporting for scheduled work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant left employment for reasons that were attributable to the employer. It does not.

The evidence in this case establishes that Mr. Crippen had been assigned to work at the General Mills facility by the temporary employment service but that the claimant discontinued

reporting for scheduled work beginning February 10, 2008. Although the claimant was aware that he had a requirement to notify the employer if he was not going to be reporting for work, he did not do so for three or more consecutive workdays.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily quit employment for reasons that were not attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid unemployment insurance benefits in the amount of \$1,014.00.

DECISION:

The representative's decision dated March 17, 2008, reference 01, is hereby reversed. The claimant voluntarily left work for reasons not 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 the claimant's weekly benefit amount, provided that he is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,014.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw