

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD WOOLMAN
Claimant

APPEAL NO. 08A-UI-06484-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TACO JOHNS OF IOWA
Employer

OC: 06-08-08 R: 02
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 7, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 14, 2008 and continued October 23, 2008. The claimant participated in the hearing August 14, 2008, but then his phone stopped working and he was not available at the number he provided for the second hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Mike Lee, Vice-President/Chief Operating Officer, and Richie Velez, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Taco Johns from October 2, 2007 to May 14, 2008. He did not call the employer or show up for work from May 7 to May 14, 2008. General Manager Richie Velez tried to call the claimant several times, because he was concerned about the claimant, but did not receive a response. The claimant had indicated he was having trouble with another employee and was not getting time off to see his children, but he rarely brought up his children and the employer had given him time off to see them when he asked. He did not bring up any problems he was having with other employees. The employer was unaware of his concerns and consequently did not have the opportunity to address them with the claimant before he left and did not return. The employer held his position open for one week, but the claimant did not contact the employer, and it determined he voluntarily quit his job.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant failed to call or show up for work from May 7 to May 14, 2008, and the employer reasonably considered him to have voluntarily quit his job. If the claimant was experiencing a problem with a co-worker or not being able to spend enough time with his children, he should have brought those problems to the attention of the employer so it could address his concerns. Instead of doing so, however, he stopped showing up or calling and would not return the employer's phone calls. Under these circumstances, the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

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 willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The July 7, 2008, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw