

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHAUN BUCKLES
1150 LINCOLN RD APT 1
BETTENDORF IA 52722

APAC CUSTOMER SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02369-RT
OC: 01-11-04 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, APAC Customer Services, Inc., filed a timely appeal from an unemployment insurance decision dated February 23 2004, reference 01, allowing unemployment insurance benefits to the claimant, Shaun Buckles. After due notice was issued, a telephone hearing was held on March 23, 2004. Turkessa Hill, Human Resources Coordinator, and Mary Huyten, Benefit Coordinator, participated in the hearing for the employer. The employer was represented by Kenneth Johnson, of TALX UC eXpress. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time TSR from November 19, 2001 until he separated from his employment on December 9, 2003. The claimant averaged approximately 31 hours per week. On or about October 1, 2003, while working on his personal automobile, the claimant was injured. This injury was unrelated to his employment. The claimant was then granted a leave of absence for medical reasons from October 1, 2003 to October 8, 2003 and was to return to work on October 8, 2003. The claimant did not return to work, but was granted a one-week extension of his leave of absence, then was granted a second one-week extension, and yet a third one-week extension, which was the maximum permitted by the employer. The claimant was to return to work on October 29, 2003, but he did not do so. The claimant's last day of work was September 26, 2003. On November 3, 2003, the employer wrote a letter to the claimant informing the claimant to call his team leader, Jason Reiser, and further informing the claimant that if the employer did not hear from him it would consider his failure to respond as a resignation. This letter was sent certified mail return receipt requested and received by the claimant. The claimant did not respond or return to work and a second letter was sent by the employer on November 24, 2003 informing the claimant that he needed to respond to the employer by November 28, 2003 and a failure to do so would be considered a resignation. This letter was sent certified mail return receipt requested and received by the claimant. The claimant called Mary Huyten, Benefits Coordinator and one of the employer's witnesses, on November 26, 2003 and informed her that paperwork for an additional extension of medical leave was on the way. However, the employer never received such paperwork. The claimant had not finished the paperwork as of that time. The claimant never returned to work. No one at the employer ever told the claimant that he was fired or discharged. The claimant never expressed any concerns to the employer about his working conditions, nor did he ever indicate an intention to quit if any of his concerns were not addressed by the employer. Work was available for the claimant if he had shown up as expected. The employer's leave policy is contained in its employee's handbook, a copy of which the claimant received and for which he signed an acknowledgement, and provides that a failure to return from a leave of absence as expected is considered a voluntary quit.

The claimant was released to work two weeks after his accident on or about October 2, 2003, but did not do so because of car problems. The emergency room doctor told the claimant to see a specialist but the claimant never did so because he had car problems and his car is still, in fact, not operating. Pursuant to his claim for unemployment insurance benefits filed effective January 11, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,360.00 as follows: \$236.00 per week for ten weeks, from benefit week ending January 17, 2004 to benefit week ending March 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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(1), (21) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (7) provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The first issue to be resolved is the character of the separation. The employer maintains that claimant voluntarily quit when he refused to come back after several extended leaves of absence for medical reasons, exhausting the available time for a leave of absence. The claimant testified that he was discharged. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily. The claimant could not provide an exact date for his discharge, nor could he provide a specific reason given for his discharge. The evidence establishes that the claimant was released to return to work two weeks after his injuries, which occurred on or about October 1, 2003, and which were unrelated to his employment, but he did not do so. The claimant even conceded eventually that he did not do so because of transportation. The claimant was sent two letters informing him that if he did not return to work or respond he would be considered a quit. The claimant never really responded to either letter. The claimant did call the employer on November 26, 2003 and promised the employer that paperwork for another leave of absence was on the way, but the employer never received the paperwork. The employer then considered the claimant to have quit effective December 9, 2003. The administrative law judge concludes that the claimant's failure to return to work because of transportation after being released to work by his physician and after two certified letters, both demonstrates an intention to terminate the employment relationship and is an overt act to carry out that intention, as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. Eventually, the claimant testified that he left his employment because his car was not operating and still is not operating. There is no evidence that the employer had promised to provide transportation to the claimant. Leaving work voluntarily because of a lack of transportation is not good cause attributable to the employer. Later in the hearing there was some evidence that the claimant was dissatisfied with his work environment, but this also is not good cause attributable to the employer. There is no evidence that the claimant ever expressed any concerns to the employer about his working conditions or that he ever indicated or announced an intention to quit if any of his concerns were not addressed by the employer. The claimant's testimony to the contrary is not credible. The claimant first testified that he was discharged, but could give no specific date for the discharge or reason. The claimant then began to testify that he had constant problems at work

but did not identify any particular problems, but this certainly indicates an intention to quit. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions or that he indicated or announced an intention to quit. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. The claimant testified that he was released to return to work two weeks after his injuries but did not do so thereafter because of car problems. The administrative law judge can understand an occasional but rare absence or tardy for transportation problems, but not for absences in excess of two weeks. These absences would not be for reasonable cause and would not be properly reported. Accordingly, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and he would still be disqualified to receive unemployment insurance benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,360.00 since separating from the employer herein on or about December 9, 2003 and filing for such benefits effective January 11, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated February 23, 2004, reference 01, is reversed. The claimant, Shaun Buckles, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left work voluntarily without good cause attributable to the employer. The claimant is overpaid unemployment insurance benefits in the amount of \$2,360.00.

b/b