

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN R WOLFE**  
Claimant

**APPEAL NO: 14A-UI-03481-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOWING CLUB LAWN CARE SERVICE**  
Employer

**OC: 01/05/14  
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(21) – Dissatisfaction of the Work Environment  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated March 26, 2014, reference 01, that held claimant was not discharged for misconduct on March 5, 2014, and benefits are allowed. A telephone hearing was held on April 22, 2014. The claimant did not participate. Chris Brunk, Owner, participated for the employer. Official Notice was taken of the Employer Appeal Documents as evidence.

**ISSUES:**

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

The issue is whether claimant is overpaid unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began work on April 5, 2013 doing landscaping and last worked for the employer as a full-time snow removal on March 3, 2014. The employer had raised an issue with claimant and other employees about reporting to work late.

On March 5, 2014 the employer owner sent a text message to claimant saying a snow blower was missing and requesting claimant to bring back any equipment he had the next day. Claimant responded that he felt ridiculed by the message and he was being pushed-out of his job so I quit. The employer asked claimant to turn in his key the next day. Claimant and employer argued about whether claimant said he quit.

Claimant came into work the next day saying the employer had terminated him. The employer denied it and said he had quit.

Claimant failed to respond to the hearing notice. There is no UI Appeals C2T record claimant called in with a phone number requesting to participate in this hearing. Claimant has received unemployment benefits totaling \$3,138.79 on his claim for the ten weeks ending March 15, 2014. The claimant has committed no act of fraud or misrepresentation to obtain these benefits. The department fact finder records the employer did not participate but the owner contends he attempted to do so.

**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(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:

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

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on March 5, 2014 due to job dissatisfaction.

The employer testimony is corroborated by text message evidence claimant quit when being asked about having employer equipment. The evidence does not show the employer was trying to get rid of claimant (or being pushed-out).

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 administrative law judge further concludes claimant is overpaid benefits \$3,138.79 for the ten weeks ending March 15, 2014 due to the voluntary quit disqualification imposed in this decision.

Whether claimant is required to repay the overpayment is remanded to claims for decision. The fact finder recorded the employer did not participate but the employer disputes it. There is no evidence of claimant fraud or misrepresentation to obtain the benefits.

**DECISION:**

The department decision dated March 26, 2014, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on March 5, 2014. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$3,138.79, and the issue whether he is required to repay it is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs