

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROME A ALLEN

Claimant

SDH SERVICES WEST LLC

Employer

APPEAL NO: 09A-UI-08833-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/09

Appellant: Respondent (2)

Section 96.5-1 – Voluntary Quit
871 IAC 22(2)j(1)(2)(3) – Leave of Absence
Section 96.3-7 – Overpayment of Benefit

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 10, 2009, reference 01, that held the claimant was dismissed from employment on December 20, 2008, and benefits are allowed. A telephone hearing was held on July 7, 2009. The claimant participated. Matt Brown, General Manager, participated for the employer. Claimant Exhibits A thru D, was received as evidence.

ISSUE:

Whether the claimant failed to return to work from a leave of absence.

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time food service manager at a Mount Pleasant, Iowa facility from about May 14, 2000 to November 25, 2008. The claimant requested a leave of absence due to some mental health issues that was granted by the employer for a period of ninety days, December 2, 2008 to March 22, 2009 under FMLA leave policy.

The claimant filed a worker's compensation claim believing that his mental health issues were job related, but the claim was denied on February 15, 2009. The claimant requested an extended leave of absence that he communicated to the employer's FMLA representative, Karen Hartwell. Hartwell replied by requesting medical documentation to support the leave extension request with a deadline date of March 20. The claimant had last seen his physician on February 15, and he was unable to secure an alternate for him by March 20. Since the claimant failed to provide the requested information, Hartwell sent him a termination letter dated March 24, 2009.

The claimant has received a release to return to work as of June 9, 2009. The claimant has not received any unemployment benefits on his current claim.

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 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer when he failed to return to work at the end of a leave of absence.

The claimant and employer agreed to a medical leave of absence that ended March 22, 2009. The employer denied the claimant's request for an extended leave due to his failure to provide physician information. The claimant did not return to work after the leave period that is considered a voluntary quit without good cause attributable to the employer.

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.

Although the claimant was eligible to receive benefits by reason of the initial department decision, it does not appear he requested such benefits, and there is no overpayment.

DECISION:

The department decision dated June 10, 2009, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to her employer on March 22, 2009 when he failed to return from a leave of absence. Benefits are denied, until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css