

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN A SCHILLING

Claimant

APPEAL NO: 14A-UI-07098-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC

Employer

OC: 06/15/14

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Agri Star Meat & Poultry, L.L.C. (employer) appealed a representative's July 7, 2014 decision (reference 01) that concluded Brian A. Schilling (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Laura Roney appeared on the employer's behalf and presented testimony from one other witness, Wayne Hill. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 3, 2012. He worked full time as a swing shift parts clerk in the employer's maintenance department. His last day of work was May 11, 2014.

The claimant had been displaying some odd behaviors at work, including falling asleep on duty and having to leave early. The employer was aware that the claimant was having some problems with some prescription medication interactions. On May 12 Roney, the employer's payroll and human resources assistant, met with the claimant and asked that that he see a doctor and get clearance that he was okay to be at work. The claimant agreed. As he left that

day he saw his supervisor, Hill, and they also discussed that the claimant would go to be seen by a doctor and make sure he was cleared to be at work.

The claimant was then a no-call/no-show for work on May 13, May 14, and May 15. On May 16 the claimant was again a no-call/no-show, but on that day the employer received an inquiry from a hospital as to the claimant's insurance coverage. The hospital did not advise the employer of the claimant's medical status, however. The claimant never recontacted the employer or sought to return to work with the employer, and ultimately the employer concluded that the claimant had voluntarily quit by job abandonment.

The claimant established a claim for unemployment insurance benefits effective June 15, 2014. A fact-finding interview was held with a Claims representative on July 3, 2014. The employer, through Roney, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,460.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code section 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. Rule 871 IAC 24.25(27). Likewise, a three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a,-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's July 7, 2014 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 16, 2014, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$2,460.00, which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css