

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERT L HARRIS
Claimant

APPEAL NO. 09A-UI-17236-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLOCKBUSTER INC
Employer

OC: 10/18/09
Claimant: Respondent (2R)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Blockbuster Inc. filed a timely appeal from a representative's decision dated November 3, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on December 21, 2009. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Melissa Parra, Store Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: Albert Harris was employed by Blockbuster Inc. from February 21, 2008 until October 18, 2009 when he voluntarily left employment. Mr. Harris held the position of part-time shift leader and was paid by the hour. His immediate supervisor was Melissa Parra.

The claimant left his employment on October 18, 2009 after reporting that a \$1,300.00 cash deposit from the previous evening had "gone missing." Mr. Harris and another employee who were present claimed no knowledge or responsibility for the missing funds.

The claimant inquired as to what his future status with the company would be and Ms. Parra responded that the company would investigate the missing funds and later make a decision as to the claimant's continued employment. Mr. Harris was informed that until notified differently, he should continue to report for scheduled work.

Both the claimant and the other employee was present at that time chose to voluntarily relinquish their position with the company. Mr. Harris turned in his keys and specifically indicated that he was quitting employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant voluntarily quit employment with good cause attributable to the employer. It does not.

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.

The evidence in the record establishes that the claimant was not told that he was being discharged for cash handling mistakes or misappropriation. The evidence in the record establishes that the claimant to the contrary, was informed that continuing employment would be available to him until an investigation was completed into a missing bank bag and its funds. Although the claimant had been repeatedly assured that he could continue to report for scheduled work until told differently, the claimant at that time chose to voluntarily relinquish his position by quitting his job and turning in his keys.

It is the conclusion of the administrative law judge based upon the evidence in the record that the claimant was not discharged from employment but instead chose to voluntarily leave the employment for personal reasons that were not attributable to the employer. Benefits are withheld.

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.

DECISION:

The representative's decision dated November 3, 2009, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remand to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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