

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTONIO J SENA**  
Claimant

**APPEAL NO. 14A-UI-00874-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASPLUNDH TREE EXPERT CO**  
Employer

**OC: 12/15/13  
Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for non participation at Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 16, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 14, 2014. Claimant participated. Employer participated by John Conger, General Foreman. Claimant failed to respond to the hearing notice and did not participate. Official notice was taken of fact-finding records.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 19, 2013. Claimant missed four days of work in a row without calling in, ending December 24. Employer's policy deems two no call absences as a voluntary quit. Employer informed claimant of the policy. Claimant had failed to call in or report for work on December 16. A supervisor gave claimant an informal warning.

Employer did participate at the fact-finding interview. Employer did not present sufficient evidence at fact finding that if un rebutted would have allowed employer to win. The fact-finding records show that employer participated with documents and by Amy Ernst and properly gave the same factual rendition that was presented at hearing.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he missed three days of work without calling in. This is job abandonment pursuant to a known company rule. Since claimant was informed of the policy this is a quit without good cause. Benefits withheld.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

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 § 96.3-7-a, -b.

This matter is remanded to the claims section for determination of claimant's overpayment.

Employer's account shall not be charged because employer did meaningfully participate at fact finding. Employer had a witness that gave the same factual information at fact finding as at the current hearing. This is participation as defined by the rule. Employer would have prevailed at fact finding had claimant not participated.

**DECISION:**

The decision of the representative dated January 16, 2014, reference 01, is reversed and remanded for determination of claimant's overpayment. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Employer's account shall not be charged.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs