

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESMOND C HOOKS
Claimant

APPEAL NO. 08A-UI-04228-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST ACADEMY LLC
Employer

**OC: 03-23-08 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 21, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on May 14, 2008. The claimant did not participate. The employer did participate through Kathryn Thompson, Staff Supervisor and was represented by Chris Hunter of People Systems. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a boys dormitory parent full time beginning September 18, 2006 through March 12, 2008 when he voluntarily quit.

The claimant was suspended from work on February 13 after he was arrested and charged with domestic abuse with injury. The claimant had been given his schedule ahead of time and knew what hours and dates he was to work in February and March 2008. On February 13, the claimant was told to keep the employer informed of his status and his court proceedings so that they would know what was going on and whether he was going to return to work. The claimant told the employer that he was going to court on February 22. The employer expected that the claimant would be able to have the charges reduced or dropped so that he could return to work. The employer did not hear from the claimant after his court date on February 22.

When the employer still had not heard from the claimant by March 4, 2008, Ms. Thompson called him to inquire about what was going on with his legal matters. The claimant was specifically told by Ms. Thompson that he needed to call in each and every day he was scheduled to work to let her know whether he would be working his shift or not. The claimant had been given a copy of the employer's handbook which provided that an employee who is a

three day no-call/no-show for work is considered to have abandoned his job. After speaking with the claimant on March 4, the employer did not hear from the claimant again. The claimant failed to report for work or notify the employer of his absences for four consecutive scheduled workdays on March 6, 8, 10 and 12, 2008 in violation of the employer's policy.

Claimant has received unemployment benefits since filing a claim with an effective date of March 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for over three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 21, 2008, reference 02, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant is overpaid benefits in the amount of \$2,429.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css