

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON D CLARK**  
Claimant

**APPEAL NO: 09A-UI-01709-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE BRANDS LLC**  
Employer

**OC: 01/04/09 R: 01  
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Advance Brands, L.L.C. (employer) appealed a representative's January 28, 2009 decision (reference 01) that concluded Jason D. Clark (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 February 24, 2009. 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 Mow appeared on the employer's behalf and presented testimony from one other witness, Erica VanOtterloo. 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.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on January 21, 2008. He worked full time as a robot operator at the employer's retail cooked chicken and beef manufacturing facility. His normal schedule was Monday through Friday, 4:53 p.m. to 1:53 a.m.

On December 19 the claimant worked most of his shift as scheduled. However, toward the end of the shift the claimant's supervisor was looking for him but he was not to be found. It was then discovered that he had clocked out and left at 1:27 a.m. without finishing his duties or obtaining the supervisor's permission. The employer's policies of which the claimant was on notice specify that leaving before the end of a shift without permission is deemed to be job abandonment. On December 22 the claimant sought to return to work but was brought in to discuss the matter with Ms. VanOtterloo, a human resources representative. When she reminded him of the employer's policy, the claimant had no explanation or response. As a result, the claimant's employment was ended.

The claimant established a claim for unemployment insurance benefits effective January 4, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,334.00.

**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 § 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 stay and perform duties or leaving rather than complete work as assigned is considered to be a voluntary quit, particularly where the employer's policy specifies that doing so will be deemed job abandonment and where no good cause or emergency reason for leaving was provided. 871 IAC 24.25(27). 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 § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's January 28, 2009 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 19, 2008, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs