

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LATWAIN CLINTON**

Claimant

**APPEAL NO. 13A-UI-07870-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CIGARETTE OUTLET INC**

Employer

**OC: 05/26/13**

**Claimant: Respondent (4/R)**

Section 96.5-1 - Voluntary Quit

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Cigarette Outlet (employer) appealed a representative's July 1, 2013 decision (reference 02) that concluded Latwain Clinton (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 30, 2013. The claimant provided a telephone number for the hearing but could not be reached at the time of the hearing. The administrative law judge left two messages for the claimant but he did not return her messages prior to the close of the record. Therefore, the claimant did not participate in the hearing. The employer participated by Deb Schnyder, Supervisor.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in June 2011, as a part-time sales clerk and worked through April 7, 2013. The claimant quit work to become a full-time worker at Home Plate Diner/Melton Robin. The claimant was laid off from work at Home Plate Diner/Melton Robin in June 2013, and returned to work with the employer on June 17, 2013. The claimant continues to work with the employer. As of August 27, 2013, the claimant is on a paid leave pending investigation of the claimant's wife. The claimant is in good standing with the employer.

The employer participated personally at the fact-finding interview on June 26, 2013, by Deb Schnyder.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits after his separation from work.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

The claimant left his position with the employer to work for another employer. When an employee quits work to take other employment, he is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. He voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged.

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 matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The representative's July 1, 2013 decision (reference 02) is modified in favor of the appellant. The claimant voluntarily left work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits because he quit to take other employment. The employer will not be charged. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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