

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMUEL L DAVIS**  
Claimant

**APPEAL NO. 13A-UI-02035-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 01/06/13  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 11, 2013, reference 03, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 18, 2013. Claimant did not answer when called as his telephone number was not in service. Employer participated by Colleen McGuinty, Unemployment Benefits Administrator; Brenda Watson, Payroll Administrator; and Trista Rodriguez, Account Manager. Exhibit One was admitted into evidence.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

**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 October 2, 2012. Claimant quit because he was overpaid. Employer paid claimant three times the amount due because of a computer glitch. Claimant refused to repay. Employer withheld his earnings on future checks. Claimant quit because he was asked to repay an overpayment of wages.

Employer failed to participate at fact finding.

**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 was asked to repay an overpayment. This is not good cause attributable to employer. Claimant had a duty to repay the overpayment. 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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The next issue concerns an overpayment of unemployment insurance benefits.

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.

The overpayment is waived because employer did not participate at fact finding.

**DECISION:**

The decision of the representative dated February 11, 2013, reference 03, is reversed. Unemployment insurance benefits are 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. The overpayment is waived.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/css