

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VINCENTE F MARCOTTE**  
Claimant

**APPEAL NO. 09A-UI-05688-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEAVER ENTERPRISES LTD**  
Employer

**Original Claim: 02/22/09  
Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Weaver Enterprises, Ltd. (employer) appealed a representative's March 31, 2009 decision (reference 01) that concluded Vincente F. Marcotte (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 May 7, 2009. The claimant participated in the hearing. Terry Moffit appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 1, 2007. He worked part time (30 to 40 hours per week) as a crew member at the employer's Dubuque, Iowa, fried chicken restaurant. His last day of work was November 24, 2008. He was incarcerated on or about that date through on or about December 1 and missed at least three scheduled days of work. When the claimant was released on December 1, he contacted a manager about whether he could return to work; the manager agreed to give him a last chance, provided that he go to a mandatory meeting on December 3. The claimant forgot and did not go to the meeting. The employer considered the claimant's employment terminated for job abandonment effective December 3, 2008. When he re-contacted the employer on December 4, he was told it was too late.

The claimant established a claim for unemployment insurance benefits effective February 22, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,964.00.

**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.

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. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). 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 March 31, 2009 decision (reference 01) is reversed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of December 3, 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

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