

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS JOHNSON
Claimant

APPEAL NO. 12A-UI-04982-VST

TARGET CORPORATION
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/01/12
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 26, 2012, reference 01, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 12, 2012. The employer participated by Michelle Anderson, the executive team lead of human resources. The record consists of the testimony of Michelle Anderson and Employer's Exhibits 1-6.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant had been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a part-time logistics team member at the Target store located on Merle Hay Road in Des Moines, Iowa. His date of hire was November 21, 2011. His last day of work was December 26, 2011. He was a no-call/no-show on December 27, 2011; December 28, 2011; December 30, 2011; and December 31, 2011. The employer has a written policy of which the claimant was aware, that a no-call/no-show on three consecutive workdays constitutes a voluntary quit. Work was available if the claimant had shown up for work.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence established that the claimant had three consecutive days of no-call/ no-show. This is considered by the employer to be a voluntary quit. The employer has a written policy to that effect and the claimant was aware of the policy. The claimant did not testify at the hearing and his reason for missing work is unknown. The administrative law judge concludes that the claimant voluntarily quit his job without good cause attributable to the employer.

The next issue is overpayment of 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 issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated April 26, 2012, reference 01, is reversed. Unemployment insurance benefits shall be 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 issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css