

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN T STEWART
Claimant

APPEAL NO. 12A-UI-07915-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC
Employer

OC: 06/10/12
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Exceptional Persons, filed an appeal from a decision dated June 29, 2012, reference 01. The decision allowed benefits to the claimant, Benjamin Stewart. After due notice was issued, a hearing was held by telephone conference call on July 25, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Emily Hodgkin.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Benjamin Stewart was employed by Exceptional Persons from November 4, 2010 until May 31, 2011 as a full-time support living staff. He worked the overnight “sleep” shift and averaged around 67 hours per week as a result.

On May 1, 2011, Mr. Stewart was notified the client with whom he worked was going somewhere else. As a result, the claimant’s hours would be reduced to about 30 per week. He talked with his supervisor about getting more hours but did not consult with human resources to find out how many positions were available in the facility as a whole. Several jobs were posted during the month of May, but he did not apply for any of them. Instead, he submitted his resignation on May 18, 2011, stating he was going to go back to school or otherwise pursue different employment. His last day of work was May 31, 2011.

Benjamin Stewart has received unemployment benefits since filing a claim with an effective date of June 10, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant quit because his hours were going to be reduced once the one client transferred at the end of May 2011. During that month, he made no effort to apply for any of the posted jobs or to consult with human resources to find supplemental hours. Continuing work was available to him, but he was content to leave it to his supervisor to work out a situation so he could get more hours.

There is no evidence he could not have continued to work his 67 hours per week, which is the level of hours he wanted to maintain. Mr. Stewart had not met his burden of proof to establish he had good cause attributable to the employer for quitting and he is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 29, 2012, reference 01, is reversed. Benjamin Stewart is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw