

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SEAN BURTLOW
Claimant

**L A LEASING
SEDONA GROUP**
Employer

APPEAL NO. 14A-UI-04136-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/23/14
Claimant: Appellant (2)**

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Sedona Staffing (employer) appealed an unemployment insurance decision dated April 14, 2014, (reference 02), which held that Sean Burtlow (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Maria Mays, Risk Administrative Assistant and Caitlin Goveia, Industrial Account Coordinator.

ISSUES:

The issues are whether the claimant is disqualified benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency and the claimant was hired on December 6, 2010. He was most recently assigned to work as an assembler fabricator on the night shift at Rock Tenn and his last day of work was February 25, 2014. The claimant was a no-call/no-show on February 26, 2014, and called off on February 27, 2014. He was a no-call/no-show on February 28, 2014, and called in on March 1, 2014. The claimant was a no-call/no-show on March 3, 2014, and called in sick on March 4, 2014.

The claimant spoke with Industrial Account Coordinator Caitlin Goveia on March 5, 2014, and stated that he could not work that night because he had to go to court in the morning. Ms. Goveia told the claimant his attendance was not acceptable and had to improve. Subsequently, he was a no-call/no-show for four consistent shifts ending March 9, 2014, and

the employer considered that he voluntarily quit. Ms. Goveia spoke with the claimant on March 14, 2014, and he stated he had been in jail.

The claimant filed a claim for unemployment insurance benefits effective March 23, 2014, and has received benefits after the separation from employment in the amount of \$390.00. Maria Mays, Risk Administrative Assistant, participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit by failing to return to work after March 25, 2014. He carried out that intent when he was a no-call/no-show for four consecutive work days after he received a warning about his attendance.

The claimant was deemed a voluntary quit on March 9, 2014. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He failed to participate in the hearing and there is no evidence to establish that he quit with good cause attributable to the employer. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$390.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated April 14, 2014, (reference 02), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$390.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css