

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL WHITE**  
Claimant

**APPEAL NO. 07A-UI-07380-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELCOME WAY INC**  
Employer

**OC: 07/01/07 R: 02**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Welcome Way, Inc. (employer), doing business as McDonalds, appealed an unemployment insurance decision dated July 27, 2007, reference 01, which held that Carl White (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 August 16, 2007. The claimant participated in the hearing. The employer participated through Katie Cooper, Store Manager. 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:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance from August 4, 2006 through June 21, 2007, when he was discharged. The employer was having a food cost issue and their waste was a lot higher than it should have been. Food was missing and the employer suspected an employee of taking food. The problem was so serious that the employer hired a private investigator. Prior to the claimant's discharge, the store manager found two lettuce boxes in the freezer containing various food products: four or five bags of chicken selects; 20 to 30 quarter pound meat patties; 10 to 15 steaks; and half a bag of sausage. All freezer products were stored in the freezer in the container in which they came with the top of the box cut off and when employees returned any products to the freezer that had not been used, they were placed back in their original containers. The lettuce boxes were hidden towards the back of the shelf and were oddly out of place. The manager contacted the owner and was directed to mark the boxes so there would be no question of which ones they were. The manager was also directed to place a note in the bottom of the box which stated the employer suspected this person of theft. The employer assumed the employee would either come forward or would stop reporting to work.

A day or two prior to his termination, the claimant reported to work and before clocking in, he went directly to the freezer. He apparently put the individual food products back into their original containers because the surveillance camera then showed him leaving the freezer with the two marked boxes that were now empty. The claimant clocked in after that and began working. The investigator was called in and shown the tape. He questioned several employees, and a female co-employee who had been living with the claimant reportedly said that she found some of the employer's products in their freezer and suspected him of theft. On June 21, 2007, the claimant reported to work at approximately 5:00 a.m. and was scheduled to work until 1:00 p.m. The private investigator was at the store and called the claimant in for questioning at approximately 10:00 a.m. Soon thereafter, the claimant left the meeting and walked off the job. He testified that the investigator told him if he failed to confess, he was through; and the claimant said he was not going to confess, so assumed he was fired. The investigator had no authority to discharge any employees and while his discharge was likely, he quit before that happened.

The claimant filed a claim for unemployment insurance benefits effective July 1, 2007 and has received benefits after the separation from employment.

#### **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 or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant testified he was under the impression he had been fired, however, the employer never discharged him. The private investigator who was questioning the claimant about theft had no authority to discharge him. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984). 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 and carried out that intent when he walked off the job after being questioned about the theft of food products.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated July 27, 2007, reference 01, 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 \$825.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw