

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUTHER G BATTE JR
Claimant

APPEAL NO. 06A-UI-10279-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KAISER CONTRACT CLEANING
SPECIALISTS INC**
Employer

**OC: 03/12/06 R: 03
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Kaiser Contract Cleaning Specialists, Inc. (Kaiser), filed an appeal from a decision dated October 12, 2006, reference 03. The decision allowed benefits to the claimant, Luther Batte. After due notice was issued a hearing was held by telephone conference call on November 6, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Site Manager Jerry Wirth.

ISSUE:

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

FINDINGS OF FACT:

Luther Batte was employed by Kaiser until July 18, 2006. He was a full-time laborer. His last day of work was July 12, 2006, and he was no-call/no-show to work on July 13, 14, and 17, 2006. The employer's policy is that three days no-call/no-show to work is a voluntary quit.

Luther Batte has received unemployment benefits since filing an additional claim with an effective date of September 10, 2006.

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.

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 claimant did not return to work and was a no-call/no-show for three consecutive scheduled shifts. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 12, 2006, reference 03, is reversed. Luther Batte Jr. is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,602.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs