

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA SHOLLEY**  
Claimant

**APPEAL NO. 13A-UI-04130-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAHER BROS TRANSFER & STORAGE INC**  
Employer

**OC: 03/17/13**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated April 3, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 13, 2013. Although the claimant provided a telephone number, he was not available at the telephone number provided, repeated messages were left. The employer participated by Mr. William Reece, Operations Manager.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Joshua Sholley was employed by the captioned company doing business as Riley Transfer and Storage from March 2012 until March 13, 2013 when he voluntarily left his employment by discontinuing to report for scheduled work. Mr. Sholley was employed as a full-time truck driver and was paid by the hour. His immediate supervisor was William Reece.

Mr. Sholley discontinued reporting for scheduled work after March 12, 2013. The claimant did not report for scheduled work the next working day but contacted the employer by telephone that night. Although the claimant continued to be scheduled, he did not report for work. Mr. Sholley had not been told that he was being discharged or separated by the employer. After the claimant failed to report for scheduled work for a number of scheduled shifts, the employer reasonably concluded that Mr. Sholley had chosen to discontinue his employment with the company. Work continued to be available to the claimant at the time he chose to leave.

## 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.

An individual who voluntarily leaves their employment must first give notice to the employer of their anticipated reason for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993).

The evidence in the record establishes that Mr. Sholley discontinued reporting for work giving his employer no reason for failing to report for the scheduled days after March 12, 2013. Work continued to be available to the claimant. Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints and discontinued reporting for work without any notice to the employer, the administrative law judge concludes that the separation was without good cause attributable to the employer and benefits are denied.

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.

**DECISION:**

The representative's decision dated April 3, 2013, reference 01, is reversed. Claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits will be remanded to Claims division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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