

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SPENSCER J HOPWOOD**  
Claimant

**APPEAL NO: 20A-UI-10766-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BIG WHEEL COMMERCIAL WASH LLC**  
Employer

**OC: 04/26/20**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 26, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 21, 2020. The claimant participated in the hearing. Jearmie Baker, Owner, participated in the hearing on behalf of the employer.

**ISSUE:**

The issues are whether the claimant voluntarily left his employment without good cause attributable to the employer and whether he is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time manager for Big Wheel Commercial Wash from February 17, 2020 to April 24, 2020. He voluntarily left his employment by failing to call the employer or report for work for three consecutive workdays.

The claimant was scheduled to work from 8:00 a.m. to 4:30 p.m. On Sunday, April 19, 2020, the claimant texted the employer his daughter was sick and his girlfriend was out of town so he needed to stay home and care for his daughter. He said he would be back at work April 22, 2020. The claimant did not text the employer or show up for work April 22 or April 23, 2020. He texted the employer at 1:12 p.m. April 24, 2020, and said he would be in Monday, April 27, 2020, "unless you are firing me." The employer responded that the claimant was supposed to return April 22, 2020, and the employer did not hear from him and considered him to have voluntarily quit his job by job abandonment.

The claimant has claimed and received unemployment insurance benefits in the amount of \$4,945.00 for the 12 weeks ending July 18, 2020.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code 871-24.25(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. 871 IAC 24.25. 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 took time off because he did not have childcare. He typically communicated with the employer by text message. The claimant told the employer he would return to work April 22, 2020, but did not report for work or contact the employer either April 22 or April 23, 2020. While the claimant stated he called the employer April 22 and 23, 2020, and there was no answer, he cannot remember what time he called and he did not call back or text the employer which was their usual form of communication. He did not report for work April 24, 2020, and did not text the employer until 1:12 p.m., over five hours after he was scheduled to begin work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

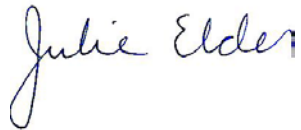
Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

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.

The claimant received unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. The claimant is overpaid benefits in the amount of \$4,945.00 for the 12 weeks ending July 18, 2020.

**DECISION:**

The August 26, 2020, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. Therefore, the claimant is overpaid benefits in the amount of \$4,945.00 for the 12 weeks ending July 18, 2020.



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Julie Elder  
Administrative Law Judge

October 23, 2020  
Decision Dated and Mailed

je/scn