

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH A THORNBURG**

Claimant

**APPEAL NO. 12A-UI-00607-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EASTERN IOWA LIGHT & POWER CO-OP**

Employer

**OC: 12/11/11**

**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated January 13, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 21, 2012. Claimant participated. The employer participated by Debra Saul, division manager of administrative services. The record consists of the testimony of Joseph Thornburg and the testimony of Debra Saul.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer; and  
Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a store keeper by the employer. He was a full-time employee. He began working for the employer in February 2009. His last day of work was December 16, 2011. On December 16, 2011, he turned in his keys to his supervisor, Marilyn, and quit. He did not give a reason for quitting.

The claimant had received a performance review on December 12, 2011. He was rated low in virtually every area such as judgment; communication skills; organizational skills; no initiative; and failure to follow instructions. He had received a warning on July 7, 2011, for improperly doing his job.

On October 4, 2011, the claimant and another employee engaged in horseplay. The claimant had gotten angry and he spray painted the back of this employee's shirt. This led to the other employee putting his arm around the claimant's neck. The claimant did report this to Ms. Saul. He told Ms. Saul that he did not want anything done about it. He did not want her to hear about

it over the "grapevine." On October 31, 2011, the claimant and another employee got into an argument. The other employee used the word "fucking" during the argument. The matter was reported and the claimant later apologized.

In early December 2011, the claimant asked if he could work part time so that he could go to school full time during the day. The employer denied this request because his job required him to work during the day.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-1 provides:

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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.

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. He voluntarily quit his employment on December 16, 2011 due to what he believed was a hostile work environment. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence provided by the claimant does not rise to an intolerable or detrimental work environment. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The findings of fact show how the administrative law judge resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony is not credible. He cites two instances in October 2011 for proof of a hostile work environment. The first incident was clearly horseplay and the claimant was just as responsible for the altercation as was the other employee. The claimant admitted he spray painted the other employee. The second incident was simply an argument for which the claimant later apologized. The claimant was the party most responsible for creating his work environment. He was a poor employee who was apparently distrusted by other employees. The claimant voluntarily quit his job and it was without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code § 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.

The overpayment issue is remanded to the claims section for determination.

**DECISION:**

The decision of the representative dated January 13, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs