

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DANIEL T WILCOX  
614 GREEN ACRES DR  
SOLON IA 52333

TOUCH OF CLASS CONSTRUCTION  
2219 – 9<sup>TH</sup> AVE SW  
CEDAR RAPIDS IA 52404

Appeal Number: 04A-UI-02236-DT  
OC: 01/04/04 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Touch of Class Construction (employer) appealed a representative's February 19, 2004 decision (reference 02) that concluded Daniel T. Wilcox (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2004. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Rich Shanstrom appeared on the employer's behalf and presented testimony from one other witness, Brian Jones. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on July 4, 2003. He worked full time as a laborer in the employer's residential construction business. His last day of work was November 17, 2003. In the evening after completion of work that day, the claimant and a coworker were at a bar. The claimant called Mr. Shanstrom at home and told him to come to the bar right away, that there was a problem. Mr. Shanstrom went to the bar, accompanied by Mr. Jones, who had been visiting at the Shanstrom home when the claimant called. When they arrived at the bar, the claimant became verbally abusive toward Mr. Shanstrom and the business, and he informed Mr. Shanstrom that he was quitting and was going to go out on his own and start his own construction business.

The claimant established a claim for unemployment insurance benefits effective January 4, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$3,051.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 provides that, 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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code Section 96.6-2. Leaving to pursue self-employment is not good cause attributable to the employer. 871 IAC 24.25(19). The claimant has not satisfied his burden. Benefits are denied.

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.

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 representative's February 19, 2004 decision (reference 02) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 17, 2003, benefits are withheld until such time as the claimant 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 is overpaid benefits in the amount of \$3,051.00.

ld/s