

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL BARNES**

Claimant

**APPEAL NO: 12A-UI-09069-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**1<sup>ST</sup> EMPLOYMENT STAFFING**

Employer

**OC: 06/17/12**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

1st Employment Staffing (employer) appealed an unemployment insurance decision dated July 18, 2012, reference 02, which held that Paul Barnes (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 11, 2012. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Mikki Skelton, Staffing Supervisor and Tom Kuiper, Employer Representative. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 14, 2012. He was placed in an assignment at Marshalltown Tools. The client company requested the claimant be removed from his assignment due to poor attendance. Marshalltown Tools directed the claimant to report to the employer on June 15, 2012 but he failed to do so and reported to Marshalltown Tools again on Monday, June 18, 2012. The client company directed him to report to his employer and he did.

The employer advised him that his assignment was over and he said he did not like operating machines anyway. He did not request any additional work and turned in his badge and left. The employer contacted him later that day with an 'asap' assignment at Pinnacle Foods. He accepted but failed to report to Pinnacle Foods. The employer tried to contact him on June 26, 2012 for an assignment at American Tubing but was unable to contact him as his phone number was no longer valid. The employer never heard from the claimant after June 18, 2012.

The claimant filed a claim for unemployment insurance benefits effective June 17, 2012 and has received benefits after the separation from employment.

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

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit by accepting an assignment on June 18, 2012 but failing to report for it. He carried out that intent when he failed to contact the employer thereafter.

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 has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated July 18, 2012, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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