

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANCE A HOFF
Claimant

APPEAL NO. 13A-UI-02690-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRAFFIX DEVICES INC
Employer

OC: 02/03/13
Claimant: Respondent (2-R)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 4, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 2, 2013. Claimant Lance Hoff did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Randy Gloyd, Human Resources Director, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether Mr. Hoff separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer manufactures highway construction safety equipment and barricades and has a production facility in Fairfield. Lance Hoff was employed by Traffix Devices, Inc., as a full-time roto-molding operator from April 2012 until January 24, 2013, when he voluntarily quit to accept other employment with a competitor of Traffix Devices, Inc. At the time Mr. Hoff voluntarily separated from Traffix Devices, Inc., that employer continued to have work for Mr. Hoff. Mr. Hoff did not successfully complete the pre-employment screening for the new employer and did not actually start work with the new employer.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.] The administrative law judge must follow the plain language of the statute.

Mr. Hoff did not participate in the hearing and, thereby, did not present any evidence to rebut the employer's testimony that he voluntarily quit to accept other employment but did not work for the new employer. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hoff voluntarily quit the employment for personal reasons and without good cause attributable to the employer. Accordingly, Mr. Hoff is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Hoff.

Iowa Code section 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 section 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 would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

DECISION:

The Agency representative's March 4, 2013, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css