

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF L SCOTT
Claimant

APPEAL NO. 10A-UI-06987-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 12/20/09
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

JELD-WEN, Inc. filed an appeal from a representative's decision dated May 3, 2010, reference 05, which held that no disqualification would be imposed regarding Jeff Scott's separation from employment. After due notice was issued, a hearing was held by telephone on June 29, 2010. Mr. Scott participated personally. The employer participated by Gale Kingery, Human Resources Associate, and Jeremy Matney, Manager. Exhibits One, Two, and Three were admitted on the employer's behalf. The employer was represented by Tom Kuiper of Talx Corporation.

ISSUE:

At issue in this matter is whether Mr. Scott was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Scott was employed by JELD-WEN, Inc. from August 8, 2009 until April 7, 2010. He was presumed to have quit when he stopped reporting for available work. He notified his supervisor on March 31 that he had to be gone on April 1 due to a court date. He had already notified the employer that he might have to spend time in jail due to a traffic violation. He was told he probably would not have a job if he did not call in on April 1. Mr. Scott did not report for work or call in on April 1. He presumed he did not have a job and, therefore, did not report for work or contact the employer thereafter. As it turned out, he only had to be in jail overnight and was released on the afternoon of April 2.

Mr. Scott was scheduled to work on April 2, 5, 6, and 7. He did not check to see how many attendance points he had as of March 31. The employer has a written work rule, of which he was aware, that presumes an individual has quit if he is absent for three consecutive shifts without notice. Continued work was still available when Mr. Scott stopped reporting for work.

Mr. Scott filed an additional claim for job insurance benefits effective March 28, 2010. He has received a total of \$3,473.99 since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Scott abandoned his job when he stopped reporting for available work after March 31, 2010. He contended that he was told he “probably” would not have a job if he did not call in on April 1. It is unclear as to why he would need to call in if he was already giving notice on March 31 that he would be absent on April 1. At any rate, he made no effort to call on April 1 to try to preserve his employment. The fact that the supervisor said he “probably” would not have a job left open the possibility that he might still have a job. Mr. Scott preempted any discharge decision by the employer by failing to return to work. For the above reasons, his separation is considered a voluntary quit.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). An individual who is absent for three days without notice in violation of a known work rule is presumed to have left employment without good cause attributable to the employer. 871 IAC 24.25(4). The evidence of record does not establish any good cause attributable to the employer for Mr. Scott’s quit. As such, benefits are denied.

Mr. Scott has received benefits since filing his additional claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual’s separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative’s decision dated May 3, 2010, reference 05, is hereby reversed. Mr. Scott quit his employment with JELD-WEN, Inc. for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Scott will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs