

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES L. MCCOSKEY**  
Claimant

**APPEAL NO. 10A-UI-17174-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VMC MANAGEMENT CORP**  
Employer

**OC: 12/27/09**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated December 9, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 27, 2011. Claimant participated. Employer participated by Keith Aljets, D.V.M., and Mike Westcott, operations manager. The record consists of the testimony of Charles McCoskey; the testimony of Mike Westcott; the testimony of Keith Aljets; and Employer's Exhibit 1.

**ISSUE:**

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 employer manages pig farms. The claimant was hired to work at Grace Hill Farm, which is located near Washington, Iowa. He was hired to assist the farrowing manager. His date of hire was August 16, 2010. His last day of work was October 8, 2010. The claimant informed his employer that he was quitting.

The claimant's primary reason for quitting his job was his belief that the job was detrimental to his health. He claimed to have gotten stuck with needles while baby pigs were being injected. This happened several times during the first two weeks he worked for the employer. He was concerned that he would get matter in his eyes while power washing and would breathe fumes that made him cough. He claimed to have gotten a black eye after being hit with a pig snout on October 7, 2010. He also did not speak Spanish and since most of his co-workers did speak Spanish, he felt that he was treated differently.

The claimant did not report any work related injuries to his employer. The employer had worker's compensation insurance and work related injuries were to be reported so that medical care could be arranged. Needle sticks could be potentially serious and it was necessary for an employee to be seen by a doctor. The claimant did not report having been hit in the eye by a piglet. This type of injury had never been reported by any other employee. There is no procedure in use at the farm where pigs are tossed in such a manner that an employee would be hit in the eye. A baby pig might be tossed underhanded over approximately two feet when a crate is being emptied. The baby pig weighs about five or six pounds.

The employer complies with all regulations concerning the ethical and humane treatment of its animals. Euthanasia is done in accordance with procedures of the American Association of Swine Veterinarians and the National Pork Board. (Exhibit 1)

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

Iowa Code § 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence is uncontroverted that it was the claimant who initiated the separation of employment. He informed his employer on October 8, 2010, that he was quitting. This is evidence of his intention to sever the employment relationship. The issue is whether the claimant had good cause attributable to the employer for ending his employment.

Although the claimant cited a number of reasons why he quit his job, most of these reasons center around concerns he had about the procedures used at the farm and his claim that he was injured or could be injured. Certainly there are risks attendant to working on a farm. The employer had a procedure for reporting injuries and had worker's compensation insurance so that medical treatment could be provided and paid for by the employer. What is puzzling to the administrative law judge is that the claimant alleged to have had numerous injuries, such as needle sticks and being struck by pigs, yet he never reported these injuries to the employer.

The claimant provided a number of examples of being hit by pigs. He claimed that 40 to 50 pound pigs were being thrown by employees and he was being hit by these pigs. This allegation is simply incredible. It would take almost superhuman strength to pick up a 40 or 50 pound pig and throw it in such a manner that a person would be hit. The claimant said his black eye was caused when a 10 or 12 pound piglet was thrown at him and the pig snout hit him in the eye. The only procedure at the farm that involved any tossing of pigs was when a crate was being emptied and there was an underhanded toss of a piglet weighing five or six pounds over a span of two feet. The claimant also said pigs were bounced off the ceiling, which also seems impossible.

The claimant did seem to be bothered by euthanasia of pigs. Dr. Aljets testified that he understood that not every person could do this unpleasant job. Dr. Aljets said that no employee was required to perform euthanasia if the employee did not want to. The employer had a policy of treating its animals ethically and humanely in accordance with procedures of the American Associate of Swine Veterinarians and the Pork Board.

The administrative law judge concludes that the claimant quit his job because he did not like his work environment. There is insufficient evidence that the workplace was intolerable or detrimental to the claimant so as to constitute 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 December 9, 2010, reference 02, 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