

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL M FRIZELL**  
Claimant

**VAN DIEST SUPPLY CO**  
Employer

**APPEAL NO. 13A-UI-01213-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/30/12**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.26(6)b – Employment Separation/Job Related Injury or Illness  
Section 96.4-3 – Able and Available  
Section 96.3-7 –Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated January 24, 2013, reference 01, that held the claimant voluntarily quit with good cause due to illness or allergy on January 2, 2013, and benefits are allowed. A hearing was held on March 4, 2013. The claimant participated. Jeff Krausman, Attorney; Lee Trask, VP Manufacturing; Clark Vold, Manufacturing Director; Kevin Spencer, Plant Operations Director, and Carolyn Cross, Personnel Manager, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUES:**

The issue is whether the claimant voluntary quit with good cause attributable to the employer.

The issue is whether the claimant was able and available for work

The issue is whether the claimant is overpaid benefits.

**FINDINGS OF FACT:**

The administrative law judge having considered the witness testimony and having considered the evidence in the record, finds that: The claimant was employed in a full-time clerical position beginning October 14, 2008 and he last worked as a production worker on January 2, 2013. After he completed his work shift on January 2, he went to the personnel office, turned in his swipe card and stated he was quitting. He had given no advance notice of his decision to quit. He offered no reason for his leaving employment.

Claimant reported a chemical splash incident to his left knee to a supervisor in August 2011. He was examined by a doctor on October 12. The doctor states the problem went away and small brown spots remained – no treatment needed. Claimant experienced some other rash incidents working in and around building #37, and was moved to other locations.

Claimant last worked in building DF2. He showed a rash to management on December 26, 2012. He did not request the employer for medical treatment and did not seek it on his own. Claimant attributes his rashes to employer chemicals and/or dust. The only doctor treatment for a claimant rash is the October 12, 2011 appointment. His decision to quit is not based on doctor advice. He never requested any employer accommodation for a health issue with a challenge he would quit unless it was done.

Claimant has received unemployment benefits on his claim.

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

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(35) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The administrative law judge concludes claimant voluntary quit without good cause attributable to the employer effective January 2, 2013.

Claimant's decision to quit employment was based on his self-diagnosis his rash(es) and/or health issues are caused by employer environmental conditions. There is no competent medical diagnosis to support claimant's opinion. Claimant provided no meaningful opportunity

to the employer to provide an accommodation for a health reason with a pre-quit announcement he was quitting employment. The law requires an employer is given advance notice of quitting due to health reasons with the opportunity to correct and/or accommodate it. Saluki v. EAB, 503 NW2d 402 (Iowa 1993)

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes there is no availability disqualification, because claimant offers the health condition is no longer a limitation on his search for work.

Iowa Code section 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.

Since the claimant has received benefits prior to the disqualification imposed in this decision, the overpayment issue is remanded to claims for a decision.

**DECISION:**

The decision of the department representative dated January 24, 2013, reference 01, is reversed. The claimant voluntary quit without good cause attributable to the employer on January 2, 2013. The claimant is able and available for work. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs