

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN C WEILAND
Claimant

APPEAL NO. 13A-UI-02664-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

FREDERICKSEN BROODER FACILITIES
Employer

OC: 01/20/13
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Fredericksen Brooder Facilities (Fredericksen) filed an appeal from a decision dated February 27, 2013, reference 04. The decision found the claimant, Nathan Weiland, qualified for unemployment benefits. After due notice was issued a hearing was held in Sioux City, Iowa, on May 23, 2013. The claimant, Nathan Weiland, was paged in the main waiting area at 8:59 a.m. and at 9:30 a.m. He was not present and did not participate. The employer participated by Manager Matt Fredericksen and Owner Greyling Fredericksen.

ISSUE:

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

FINDINGS OF FACT:

Nathan Weiland was employed by Fredericksen from April 2012 until January 21, 2013 as a full-time general laborer. On Sunday, January 20, 2013, the claimant and Manager Matt Fredericksen began an extensive exchange of text messages back and forth. It began regarding something the claimant's girlfriend had put on her Facebook page about the manager. The claimant was asked to come to the farm and talk about things but he refused, saying he had no gas and was eating dinner. The employer offered to pay for a tank of gas but the claimant still refused.

Finally the employer said he wanted Mr. Weiland at work an hour early so the misunderstanding could be discussed. The claimant still refused and said "you can fire me and that's fine 'cos you are screwed 'cos you fired me 'cos Steph is going to expose the truth about what you've been hiding." The claimant did not show up to work after that.

Nathan Weiland has received unemployment benefits since filing a claim with an effective date of January 20, 2013.

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.

The claimant was not fired. He challenged the employer to fire him but nothing was stated by the employer that Mr. Weiland was discharged or that he should not show up to work the next day. The decision not to continue working was entirely that of the claimant. He quit because he was being asked to discuss what his girlfriend was putting on her Facebook about the manager. This does not constitute good cause attributable to the employer for resigning and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 27, 2013, reference 04, is reversed. Nathan Weiland is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs