

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANNER W KOSMAN
Claimant

APPEAL NO. 08A-UI-06221-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 06/01/08 R: 02
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeld-Wen filed a timely appeal from the June 27, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 21, 2008. Claimant Tanner Kosman did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Judi Gentry of TALX UC eXpress represented the employer and presented testimony through Coordinating Group Manager Butch Greer and Safety and Human Resources Manager Chris Juni. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Six into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tanner Kosman was employed by Jeld-Wen as a full-time production worker. Mr. Kosman started his employment on November 6, 2006 and last performed work for the employer on May 21, 2008. At the start of the employment, Mr. Kosman was assigned to the first-shift. The hours of the first shift were 7:00 a.m. to 3:00 p.m., Monday through Friday, with occasional Saturday work. Toward the end of Mr. Kosman's employment, production on the first shift had slowed and Production Manager Travis Smith spoke to Mr. Kosman about transferring to the third-shift and to a different work area within the same plant. The hours of the third shift were 11:00 p.m. to 7:00 a.m., Sunday night through Thursday morning. Mr. Kosman indicated a willingness to accept the transfer to the third-shift. The employer witnesses do not know when the change was supposed to take effect.

On Thursday, May 22, Mr. Kosman was scheduled to work the first shift. Mr. Kosman did not appear for work or notify the employer he would be absent. Mr. Kosman was next scheduled to work on Tuesday, May 27. On that day, Mr. Kosman was again scheduled to work the first shift.

Mr. Kosman did not appear for work or notify the employer he would be absent. Mr. Kosman was next scheduled to work the first shift on Wednesday, May 28. Again, Mr. Kosman did not appear for work or notify the employer he would be absent. Mr. Kosman did not return to employment or make further contact with the employer. On May 28, Production Manager Travis Smith documented that Mr. Kosman had abandoned the employment by being absent three days without notifying the employer. The employer lacked a written policy that stated three days "no-call/no-show" would be deemed a voluntary quit. However, the employer had notified Mr. Kosman at the time of his orientation and during subsequent staff meetings that three days "no-call/no-show" would be deemed a voluntary quit.

Mr. Kosman established a claim for unemployment insurance benefits that was effective June 1, 2008, and has received benefits totaling \$1,735.00.

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.

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.

871 IAC 24.25(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Because Mr. Kosman did not participate in the hearing, the evidence in the record is limited to the evidence presented by the employer. The evidence in the record indicates that Mr. Kosman abandoned the employment by being absent three days without notifying the employer in violation of the employer's policy. The administrative law judge concludes that Mr. Kosman voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Kosman 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. Kosman.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Mr. Kosman had received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Kosman must repay to Workforce Development. Mr. Kosman is overpaid \$1,735.00.

DECISION:

The Agency representative's June 27, 2008, 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. The claimant is overpaid \$1,735.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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