

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY A JOHNSON
Claimant

APPEAL NO: 10A-UI-17331-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 11/14/10

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Jacobson Staffing Company, L.C. (employer) appealed a representative's December 9, 2010 decision (reference 01) that concluded Bradley A. Johnson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2011. The claimant participated in the hearing. Danielle Aeschliman appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on June 1, 2010. He worked full time on the first shift as a production worker at the employer's Grinnell, Iowa business client. His last day on the assignment was July 7, 2010. The assignment ended because he stopped showing up for available work after that date.

The claimant did not have a car or driver's license, but had indicated when hired that he had a reliable source of transportation. That transportation was getting a ride with a friend who also worked for the employer at the same business client on the same shift. That friend moved to a third shift position as of July 5. As a result, the claimant no longer had a ride to work. He did illegally drive to work through July 7, but then determined he should not do that any longer. The employer had never offered to provide the claimant with any means of transportation.

The claimant established a claim for unemployment insurance benefits effective November 14, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting because of a loss of transportation, where the employer has not committed to providing transportation, is not a good cause for quitting attributable to the employer. 871 IAC 24.25(1). The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's December 9, 2010 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 8, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css