

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GEORGE D WHITSLAR**  
Claimant

**APPEAL NO. 07A-UI-03660-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROFESSIONAL RESOURCES INC**  
Employer

**OC: 07-16-06 R: 01  
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving - Layoff  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 16, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 24, 2007. The claimant did not participate. The employer did participate through Shawna Simpson, Staffing Manager.

**ISSUE:**

Was the claimant laid off due to lack of work?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was assigned to work at the Eaton Corporation in Shenandoah, Iowa. The company shut down from December 25, 2006 through January 2, 2007 for the holidays. The claimant notified the employer, Professional Resources, on December 28 that he had not been working at Eaton. The employer told him that they had other assignments they could put him on during the Eaton shut down, but the claimant refused another assignment because his wife was sick and he wanted to stay home with her.

Claimant has received unemployment benefits since filing a claim with an effective date of July 16, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a lack of work.

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 assigned to work at Eaton, and while Eaton may have shut down for a week, the claimant had the option of taking another assignment. There was work available to him, but he chose not to work. Therefore, the separation was not attributable to a lack of work by the employer. Benefits are denied.

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 claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The January 16, 2007, reference 01, decision is reversed. The claimant was not laid off due to a lack of work. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant is overpaid benefits in the amount of \$347.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw