

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS A POOLMAN
Claimant

APPEAL NO. 08A-UI-00122-JTT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CORNELL, ROBERT M
BOB CORNELL CONSTRUCTION
Employer

OC: 12/02/07 R: 01
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Robert M. Cornell, d/b/a Bob Cornell Construction, filed a timely appeal from the December 26, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on January 22, 2008. Claimant Nicholas Poolman participated. Bob “Elijah” Cornel, Jr., owner, represented the employer. The administrative law judge took official notice of the Agency’s record of benefits disbursed to the claimant.

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: Nicholas Poolman was employed by Bob Cornell Construction as a full-time laborer/carpenter from June 2006 and last performed work for the employer on November 16, 2007. Mr. Poolman’s immediate supervisor was Bob “Elijah” Cornel, Jr. Foreman Nathan Norgaard sometimes substituted as Mr. Poolman’s immediate supervisor.

On November 19, Mr. Poolman telephoned Mr. Cornel to say that he was giving a one-month notice of his quit. Mr. Poolman had not been getting along with Mr. Norgaard. Mr. Poolman had an ongoing personality conflict with Mr. Norgaard. Both Mr. Poolman and Mr. Norgaard contributed to the conflict. Mr. Poolman indicated that he would continue to work until his quit date and asked Mr. Cornel whether he could pick him up that day. Mr. Cornel indicated he could not pick Mr. Poolman up and instructed him to call Mr. Norgaard for a ride to the job site. Mr. Poolman telephoned Mr. Norgaard’s cell phone, but was unable to make contact with Mr. Norgaard. Mr. Poolman was angered by the fact that Mr. Norgaard did not answer his phone. Mr. Poolman called Mr. Cornel back and left a voice message for Mr. Cornel. Mr. Poolman indicated that he was “tired of this bullshit” and was “done.” Mr. Poolman indicated

that he would no longer work for the employer. Mr. Poolman had self-employment outside the employment with Bob Cornel Construction.

A month prior to giving his quit notice, Mr. Poolman thought Mr. Norgaard had sabotaged a construction project on which Mr. Poolman and Mr. Norgaard had been working. Mr. Poolman did not see Mr. Norgaard sabotage the project. One week after this incident, Mr. Norgaard was attempting to buy some tools from an acquaintance. Mr. Poolman became upset when he learned that a friend of Mr. Norgaard's was trying to buy the same tools.

A couple days after Mr. Poolman left a message telling Mr. Cornel that he had quit, Mr. Poolman called Mr. Cornel. Mr. Poolman told Mr. Cornel about his plan to travel to Mississippi for a week after Thanksgiving. Mr. Cornel indicated a willingness to talk to Mr. Poolman after his trip about further employment, but made no specific offer of employment. Mr. Poolman contacted Mr. Cornel after he returned from Mississippi, but Mr. Cornel did not have work for Mr. Poolman. Mr. Cornel had hired two new employees.

Mr. Cornel established a claim for benefits that was effective December 2, 2007 and received benefits.

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.

The greater weight of the evidence indicates that Mr. Poolman did in fact voluntarily quit the employment on November 19, 2007. Though Mr. Poolman indicated in his November 19 conversation with Mr. Cornel that his quit would be effective one month from November 19, Mr. Poolman then notified the employer that his quit was effective immediately. Mr. Poolman then did not appear for work. The evidence indicates that Mr. Poolman spoke with Mr. Cornel a couple days after his quit, but that there was no agreement about further employment. The evidence indicates that when Mr. Poolman contacted Mr. Cornel after he returned from Mississippi, there still was not agreement about further employment. The greater weight of the evidence indicates that Mr. Poolman quit the employment because of a personality conflict with a supervisor. A quit based on a conflict with a supervisor is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Poolman voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Poolman 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. Poolman.

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. Poolman has received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Poolman must repay. Mr. Poolman is overpaid \$1,736.00.

DECISION:

The Agency representatives December 26, 2007, reference 02, 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 \$1,736.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs/kjw