

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J BOROSKO

Claimant

APPEAL NO. 09A-UI-03527-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES USA

Employer

OC: 01/25/09

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Quit
Section 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 23, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2009. Claimant and Brenda Borosko participated. Employer participated by Brian Chatham, Doug Stogdill and Representative Robin Moore. Exhibit 1 was admitted into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 28, 2009. The claimant quit his employment on January 30, 2009. The claimant worked as a security guard at a meat processing plant. The claimant heard that an employee of the plant brought a gun into the plant to shoot some cats. The claimant did not see the gun in the plant but did see it in a parking lot. The claimant filled out an incident report and gave it to the plant on January 25, 2009. The claimant asked his employer if he could change his shift to work when the plant employee who had the gun was not working. The claimant did not tell his employer why he wanted to change shifts. When he was told he could not change his shift, he quit the next day. The claimant asked his employer about the proper procedure concerning reporting the fact that an employee may have had a gun on premises. He did not tell his employer that that was the reason he quit until after he had done so. The claimant has reapplied for work with the employer. The claimant thought that there was not fast enough action on disciplining or discharging the employee who may have brought a gun on premises.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship. The claimant had made a report based upon hearsay he received that a plant employee brought in a gun. There was no threat of using the gun on any human. The claimant did not wait for an investigation to be completed nor did he inform his employer that he was quitting due to safety concerns. The claimant has not shown that the working conditions were detrimental.

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.

This matter is remanded to the claims section for determination of an overpayment.

DECISION:

The decision of the representative dated February 23, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the claims section for determination of an overpayment.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs