

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN C DUNSHEE
Claimant

APPEAL NO. 08A-UI-06827-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLUB GARDEN & GREENHOUSES INC
Employer

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

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Holub, filed an appeal from a decision dated July 18, 2008, reference 01. The decision allowed benefits to the claimant, Brian Dunshee. After due notice was issued a hearing was held by telephone conference call on August 26, 2008. The claimant participated on his own behalf. The employer participated by President Mike Holub.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Brian Dunshee was employed by Holub from March 24 until May 26, 2008 as a full-time general laborer. At the time he was hired President Mike Holub told him the job would be temporary and would end “sometime” around the end of May, depending on the level of help needed.

The claimant’s last day of work was May 26, 2008, and he decided he would not be needed after that because work was slow. No one on behalf of the employer notified him he did not need to report to work after that date. In fact, he left a message on the employer’s answering machine on May 27, 2008, stating he had a job interview and would not be in that day, but he was no-call/no-show to work after that. Work was available to him through the middle of June because the employer was short-handed.

Brian Dunshee has received unemployment benefits since filing a claim with an effective date of June 1, 2008.

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.

The claimant maintains he was laid off for lack of work but there is nothing in the record to support this contention. While it is true this was a temporary job, he was not given a definite ending date for the work, and indeed, work was available to him for at least a few more weeks. He maintains he decided his work had come to an end on May 26, 2008, but then could not explain why he called in the next day to report he would not be in to work. Mr. Dunshee apparently expected Mr. Holub to call him but he had never made the request to be contacted by the employer, but was simply no-call/no-show to work after May 27, 2008.

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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 18, 2008, reference 01, is reversed. Brian Dunshee is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs