

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREME J LAMB
Claimant

APPEAL NO. 06A-UI-09353-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUILDER SERVICES GROUP INC
Employer

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

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

STATEMENT OF THE CASE:

Builder Services Group, Inc. (employer) appealed a representative's September 11, 2006 decision (reference 01) that concluded Jereme J. Lamb (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualified him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 4, 2006. The claimant participated in the hearing. Andy Eagan, an assistant manager, 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 15, 2005. The employer hired the claimant as a full-time sales manager. On June 1, 2006, the claimant started working as an installer for the employer. After the claimant began working as an installer, he worked 45 to 48 hours in June. The claimant was not happy working for the employer. The claimant and his wife went to Texas to check out potential job opportunities in Texas. The claimant went to Texas more than once in July.

The week of July 3, the claimant worked 34.5 hours and received 8 hours of holiday pay; the week of July 10, the claimant worked 32 hours; the week of July 17 he worked 39.5 hours. The claimant did not work as scheduled on July 24. On July 25, the claimant worked 11.25 hours.

The claimant did not work as scheduled on July 26, 27 and 28. The claimant was either in Texas or he was at home ill these days.

In early August the claimant and employer talked. At that time, the claimant informed the employer he quit. The claimant quit because he had not been working as many hours in July as he had worked in June. The claimant believed the employer kept reducing his hours and he was not working the guaranteed 40 hours a week. The employer understood the claimant quit because he had accepted a job in Texas and planned to move. As of the date of the hearing, the claimant has not accepted an offer of employment in Texas.

The claimant established a claim for unemployment insurance benefits during the week of August 6, 2006. The claimant filed claims for the weeks ending August 12 through September 30, 2006. The claimant received his maximum weekly benefit amount of \$360.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant voluntarily quit his employment. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits with good cause if he leaves employment because of a substantial change in the employment. 871 IAC 24.26(1). The claimant asserted he quit because the employer substantially reduced his hours and he was not getting his guaranteed 40 hours a week. There was only one day in July the employer did not have work for the claimant to do and asked him to stay home. There was only one week in July, the week of July 10 that the claimant worked 32 hours instead of 40 hours. The facts do not support the claimant's assertion that the employer substantially reduced his hours. It is true that in July the claimant was not working the overtime hours he had worked in June, but overtime is not guaranteed. The claimant did not establish that the employer substantially changed his employment by reducing his hours of work.

Even though the claimant was looking into other employment in Texas, he had not accepted an offer of work and as the date of the hearing had not accepted any other employment. The evidence establishes the claimant quit his employment for compelling personal reasons because he was not happy working for the employer any longer. This reason does not qualify the claimant to receive unemployment insurance benefits. Therefore, as of August 6, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending August 12 through September 30, 2006. The claimant has been overpaid \$2,880.00 in benefits.

DECISION:

The representative's September 11, 2006 decision (reference 01) is reversed. The claimant voluntarily quit his employment for compelling personal reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of August 6, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending August 12 through September 30, 2006. The claimant has been overpaid and must repay a total of \$2,880.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs