

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L SIMMONS
Claimant

APPEAL NO. 11A-UI-01018-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOLDT INNOVATIVE SERVICES INC
Employer

OC: 12/19/10
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Boldt Innovative Services, Inc. filed a timely appeal from an unemployment insurance decision dated January 20, 2011, reference 02, that allowed benefits to Richard L. Simmons. After due notice was issued, a telephone hearing was held February 24, 2011 with Mr. Simmons participating. Owner Lynn Whaley participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Richard L. Simmons was employed as a laborer by Boldt Innovative Services, Inc. beginning June 17, 2010. He last worked November 23, 2010. He was scheduled to work November 24, November 26 and November 29, 2010. He was absent and did not contact the employer. Owner Lynn Whaley contacted Mr. Simmons by phone during the week of November 29, 2010. He told Mr. Whaley that he had been on a drinking binge and had stopped reporting to work because he assumed he would be fired. Mr. Whaley accepted Mr. Simmons' resignation during that phone call. Mr. Whaley left open the possibility of a rehire if business conditions warranted it. The claimant has received unemployment insurance benefits since filing a claim effective December 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

While the earlier decision characterized the separation as a layoff, the evidence in this record persuades the administrative law judge that Mr. Simmons abandoned his employment while work was still available by failing to report to work or contact the employer. The employer's generosity in leaving open the possibility of rehiring Mr. Simmons does not change the quit to a layoff.

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 question of whether the claimant must repay benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated January 20, 2011, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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