

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD C WILLIAMS
Claimant

APPEAL NO. 10A-UI-04709-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN CO
Employer

OC: 02/14/10
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 10, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 12, 2010. Claimant participated. Employer participated by Cecil O'Neal, store manager. Mary Feeney was a witness for the employer. The record consists of the testimony of Chad Williams; the testimony of Cecil O'Neal; and the testimony of Mary Feeney.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer: and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a drug store located in West Des Moines, Iowa. The claimant was hired on July 31, 2006, as a full-time photo specialist. On January 26, 2010, the claimant underwent surgery and was off on a voluntary leave of absence. He was scheduled to return to work on February 16, 2010. Prior to the claimant being off on disability leave, the claimant had missed a day of work. He told his employer that he had been in jail. Mr. O'Neal told the claimant that he would need some proof of that. The claimant kept telling Mr. O'Neal that the "papers" were in his father's safe and he could not access them as his father was gone. The claimant actually had never been in jail but had missed work in order to take care of a child. He attributes his lie to his own stupidity.

The claimant was released by his doctor on February 15, 2010, and he took the slip to Mr. O'Neal. The claimant knew Mr. O'Neal would ask about the papers and he would have to confess to having lied about why he was gone. The claimant told Mr. O'Neal that he was quitting his job.

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 evidence in this case established that it was the claimant who initiated the separation of employment. The claimant had previously lied to his employer on why he missed a day of work. He said that he had been in jail when in reality he had been taking care of a child. When asked why he made up this story, he had no reason other than to say that it was "real dumb." Mr. O'Neal had asked the claimant for documentation of the night he had supposedly been in jail and the claimant realized that he was going to have to confess to the misrepresentation. He was scheduled to return from a voluntary leave of absence for medical reasons on February 16, 2010. Instead he came to see Mr. O'Neal on February 15, 2010, and told him he was quitting. The greater weight of the evidence is that the claimant initiated the separation by announcing he was quitting. This version of events was confirmed by a witness to the conversation: Mary Feeney. The evidence shows that the claimant wanted to quit rather than be terminated for his previous misrepresentation. Since the claimant voluntarily left without good cause attributable to the employer, benefits are denied.

The next issue is overpayment of benefits. .

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 a determination of the overpayment issue.

DECISION:

The decision of the representative dated March 10, 2010, 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. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs