

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN L KIGER
Claimant

APPEAL NO: 11A-UI-01110-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE STAFFING
Employer

**OC: 12/26/10
Claimant: Appellant (1-R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(23) – Serious Family Needs
871 IAC 24.25(4) – Absent Without Notice
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 28, 2011, reference 02, that held he voluntarily quit without good cause on January 13, 2011, and benefits are denied. A telephone hearing was held on March 1, 2011. The claimant did not participate. Melissa Flippin, Accounting Manager, participated for the employer.

ISSUE:

Whether claimant voluntarily left with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant worked for the employer beginning June 4, 2010 as a temp-to-hire general laborer at Siemens. Although there were some minor employment interruptions in December due to the holidays, the claimant worked the majority of each workweek.

Claimant last worked for the employer on January 12, 2011. He called the employer on the following requesting time off from work due to serious family matter. Employer advised claimant it would grant him a leave of absence, but he needed to come in and fill-out forms in order to do so. The claimant failed to make a formal request for a leave from employment, and after three days, he was considered a voluntary quit.

The claimant failed to respond to the hearing notice. The claimant has received unemployment benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

871 IAC 24.25(23) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The administrative law judge concludes that the claimant voluntarily quit without good cause attributable to the employer effective January 13, 2011.

Although the claimant had a good personal reason for leaving employment, it is not one attributable to the employer. The employer gave claimant an opportunity to maintain employment with a leave of absence, but he failed to make a formal request and abandoned his job.

Iowa Code § 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.

Since the claimant has received benefits on his current unemployment claim, this issue is remanded to claims for a decision.

DECISION:

The department decision dated January 28, 2011, reference 02, is affirmed. The claimant voluntarily quit without good cause effective January 13, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs