

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVE SIMS**  
Claimant

**APPEAL NO: 08A-UI-02334-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS & ASSOCIATES INC**  
Employer

**OC: 02/03/08 R: 02**  
**Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Wells & Associates, Inc. (employer) appealed an unemployment insurance decision dated March 5, 2008, reference 01, which held that Steve Sims (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2008. The claimant participated in the hearing. The employer participated through Terry Wells, President; John Peters, Accounts Manager; and Tina Shanks, Customer Service. Employer's Exhibit One was admitted into evidence. 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.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service for inside sales from January 2006 through February 5, 2008 when he voluntarily resigned. He sent the employer an email at 8:09 a.m. on February 5, 2008 advising the employer, "I am going to quit today. I cant (sic) take it anymore and I will find something else."

The claimant filed a claim for unemployment insurance benefits effective February 3, 2008 and has received benefits after the separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the

employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by sending the employer an email stating that he quit. Although he denies sending the email, the evidence is overwhelming that he did send the email. The claimant states in a letter to Iowa Workforce that he was not even at his computer at that time but testified at the hearing that he sent an email to his wife at that same time. He claims the president of the company sent the email which does not really make sense, particularly when he also claims the president fired him. The claimant's computer was password protected and he claims the president had his password but also admits that he gave the president his computer password on a piece of paper when he left the facility. That would not have been necessary if the president had the claimant's password.

The claimant's credibility was further questioned when he claims a co-worker gave him personal emails that he provided to Iowa Workforce. He claims the co-worker gave him the emails to protect her job but the co-worker flatly denies giving the claimant any emails and testified that she believed the claimant had been using her computer without authorization since her computer was not password protected. Furthermore, the claimant could not explain how the emails would have protected this co-worker.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated March 5, 2008, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he 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 claimant is overpaid benefits in the amount of \$1,735.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs