

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL RICHARDS**  
Claimant

**APPEAL NO: 07A-UI-10486-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMCO ENTERPRISES INC**  
Employer

**OC: 08/26/07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(4) – Voluntary Quit Without Good Cause  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

EMCO Enterprises, Inc. (employer) appealed an unemployment insurance decision dated November 8, 2007, reference 03, which held that Michael Richards (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 November 30, 2007. The claimant participated in the hearing. The employer participated through Mary Bordwell, Senior Human Resources Generalist and Todd Richardson, Employer Representative. Employer's Exhibits One through Three and Claimant's Exhibit A were 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 fork truck driver from September 5, 2007 through October 12, 2007. The employer's attendance policy provides that if an employee is a no-call/no-show for three consecutive workdays, they are considered to have voluntarily quit due to job abandonment. The claimant was aware of the employer's attendance policy. The claimant was a no-call/no-show on October 8, 2007. He called the attendance line on October 9, 2007 and reported he was taking medical leave but provided no other information and no medical documentation. The claimant was a probationary employee and did not qualify for medical leave. He was considered to have voluntarily quit after he was a no-call/no-show for three consecutive days ending October 12, 2007.

The claimant filed a claim for unemployment insurance benefits effective August 26, 2007 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. Iowa Code section 96.5-1.

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 section 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 section 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.

The claimant was deemed a voluntary quit on October 12, 2007 after three days of no-call/no-show. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The claimant provided medical documentation for the hearing which established that he was hospitalized in the Broadlawns Medical Center from October 10, 2007 through October 14, 2007. However, this information was never provided to the employer prior to the hearing and was only dated one day before the hearing. There is insufficient evidence to establish that the claimant was unable to contact the employer when he was in the hospital. Furthermore, he took no action after being discharged from the hospital to notify the employer as to his absences and his failure to report those absences. The claimant has not established that he quit with good cause attributable to the employer. Benefits are therefore denied.

Iowa Code section 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 November 8, 2007, reference 03, 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 \$714.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs