

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROME J BERENZ
Claimant

APPEAL NO. 08A-UI-10365-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARLESCO INC
WOODLAND GALLERY
Employer

OC: 10/05/08 R: 12
Claimant: Respondent (2-R)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 29, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 19, 2008. Claimant participated. Les Siebke, owner, represented the employer.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is an art gallery and framing business. Jerome Berenz was employed by Woodland Gallery as a full-time salesperson and framer. Mr. Berenz worked five days per week, Tuesday through Saturday. Mr. Berenz started the employment in October 2006 and last performed work for the employer on April 10, 2008, at which time Mr. Berenz traveled to Wisconsin for a funeral. Prior to leaving, Mr. Berenz had notified owner Les Siebke of his need to travel to Wisconsin for the funeral. The employer had approved an absence for that purpose. A week after Mr. Berenz left, he telephoned Mr. Siebke and told him that he was still in Wisconsin. Mr. Berenz stayed in Wisconsin for a couple weeks and then returned to the Davenport area at the end of April. Mr. Berenz's absence from the workplace exceeded ten working days. Mr. Berenz does not know when exactly he returned to Iowa. After Mr. Berenz returned to Davenport, he called the workplace and spoke to a coworker, who indicated that Mr. Berenz was no longer employed by Woodland Gallery. Sometime later, Mr. Berenz spoke directly to Mr. Siebke, and the employer indicated he no longer had work for Mr. Berenz.

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.

Where a person leaves work for compelling personal reasons, but the period of the absence exceeds ten working days, the person is presumed to have voluntarily quit the employment.

The weight of the evidence indicates that Mr. Berenz voluntarily left the employment to attend a funeral. The weight of the evidence indicates that Mr. Berenz traveled out of state for the funeral and remained outside the state for a two-week period. The evidence indicates that Mr. Berenz then returned to Iowa and spoke to a coworker, who indicated Mr. Berenz was no longer employed. Mr. Berenz's absence from the workplace exceeded ten working days. The employer reasonably concluded that Mr. Berenz had quit the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Berenz voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Berenz is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Berenz.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's October 29, 2008, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

The matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw