

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS BUHR
Claimant

APPEAL NO: 07A-UI-05769-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE PRO LINE CO INC
Employer

**OC: 05/13/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The Pro Line Company, Inc. (employer) appealed an unemployment insurance decision dated May 29, 2007, reference 01, which held that Nicholas Buhr (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 June 26, 2007. The claimant participated in the hearing. The employer participated through Jennifer Cohrt, Human Resources Manager. 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 hired as a full-time crew laborer for this construction company on April 25, 2006 and worked through May 2, 2007. He took a day of vacation on May 3 and was off on May 4 and May 7 due to poor weather. The claimant called in sick on May 8 and May 9 but was a no-call/no-show on May 10. The employer called the claimant's home but did not reach him and the claimant later returned the call. The employer asked why he had not called in to report his absence and the claimant said he left a message on voice mail. The employer asked if he would be at work on May 11 and the claimant said he would be returning to work that day. The employer told him that if he was unable to report to work on May 11, then he needed to call in and speak directly with someone instead of leaving a voice mail message. The claimant was a no-call/no-show on May 11, 14 and 15. The employer's policy provides that employees are considered to have voluntarily quit if they are a no-call/no-show for three consecutive work days. The employer prepared and sent the claimant a letter on May 15, 2007 confirming that he had voluntarily quit his employment and asked the claimant to call the employer. The claimant failed to respond to the letter.

The claimant filed a claim for unemployment insurance benefits effective May 13, 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.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or report to work for three consecutive work days

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 May 15, 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. He has not satisfied that burden. Benefits are 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 May 29, 2007, 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 \$666.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs