

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN B PEACOCK**

Claimant

**APPEAL NO: 11A-UI-14143-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY LC**

Employer

**OC: 08/21/11**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Jacobson Staffing Company, L.C. (employer) appealed a representative's October 18, 2011 decision (reference 01) that concluded Justin B. Peacock (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2011. The claimant participated in the hearing. Kristen Moore appeared on the employer's behalf. 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:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. After a prior period of employment with the employer from March 29, 2010 through September 28, 2010, the claimant most recently resumed working through the employer on May 8, 2011. He worked full-time on the third shift as a machine operator at the employer's Ames, Iowa, business client. His last day of work was August 19, 2011.

The claimant has periodically been attending classes. When the claimant took the assignment beginning May 8, the employer knew that the claimant could eventually return to school. However, the position offered by the employer and accepted by the claimant was not for a certain period of time, and there was no agreement between the parties that the assignment would end when the time came for classes to begin in the fall. The employer had hoped that since the job offered and accepted was a third-shift position, the claimant might be able to continue in the employment even after classes resumed.

On or about August 15, the claimant gave the employer a two-week notice of resignation due to returning to school, so that his last day of work would have been August 26. Later that week,

the claimant inquired of the employer whether he needed to work the second week of the notice period, because work on the assignment was slow; the employer responded that this was up to the claimant. As a result, the claimant's last day of work was August 19. There was continued work available for the claimant on the assignment after August 19, and the employer did replace the claimant in the assignment.

The claimant established a claim for unemployment insurance benefits effective August 21, 2011. The claimant has received unemployment insurance benefits after the separation.

### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 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 and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting employment to return to school is a good personal reason, but is not a good cause attributable to the employer. 871 IAC 24.25(26). Leaving temporary employment because the specific term of employment had been completed would not be a voluntary quit, but in this case there was no specific term of employment agreed upon between the parties; the claimant did not complete the assignment. 871 IAC 24.26(19). The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's October 18, 2011 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 19, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. This matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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