

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY W MICHAEL
Claimant

APPEAL NO. 08A-UI-09733-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ACOUSTICAL CEILING DESIGN
SERVICES INC**
Employer

OC: 09/07/08 R: 02
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Acoustical Ceiling Design Services (ACDS), filed an appeal from a decision dated October 21, 2008, reference 01. The decision allowed benefits to the claimant, Jody Michael. After due notice was issued a hearing was held by telephone conference call on November 6, 2008. The claimant participated on his own behalf. The employer participated by President Arnold Bingaman.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jody Michael was employed by ACDS from January 2005 until June 18, 2008 as a full-time ceiling installer. On June 18, 2008, the claimant called President Arnold Bingaman and said he “was not putting up with it anymore” and quit. He was asked by the employer to stay but said he did not like working with another employee. Mr. Bingaman offered to address the situation but the claimant refused.

Mr. Michael had not been happy the other employee was “yelling” at a delivery driver that morning. In the past he had also been displeased the other person would show up late, but he himself would also be late to the job site on occasion. He refused to continue working even though the employer offered to deal with the problem once he had been advised of it.

Jody Michael has received unemployment benefits since filing a claim with an effective date of September 7, 2008.

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.

871 IAC 24.25(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

The claimant quit rather than continue working with another employee. His complaints were regarding matters which did not directly affect him, such as the other employee allegedly "yelling" at a delivery driver and being late to work. These were matters which affected the employer but not Mr. Michael directly. His refusal to allow the employer to address his complaints prior to quitting means the resignation was without good cause attributable to the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue

of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 21, 2008, reference 01, is reversed. Jody Michael is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs