

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT A YOUNG**  
Claimant

**APPEAL NO: 13A-UI-10397-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WRH INC**  
Employer

**OC: 08/04/13**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(21) – Dissatisfaction of the Work Environment  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 5, 2013, reference 02, that held it failed to establish misconduct in the discharge of the claimant on March 12, 2013, and benefits are allowed. A telephone hearing was held on October 31, 2013. The claimant, and witness/girlfriend, Lori Butler, participated. Virginia Possehl, Office Manager, and Steve Havran, Safety/Equipment Manager, participated for the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began work on December 10, 2012 and last worked for the employer as full-time concrete labor on March 12, 2013 at a Prairie City, Iowa work location. He submitted a job application that he was willing to travel to work at different locations.

On March 12, 2013 the claimant's feet got wet and cold to the point he went to the job trailer to warm-up. After a period of time the site superintendent advised claimant he would be moving with the excavating crew to different job sites. Claimant responded he did not want to travel and stay in motels. He said he was quitting.

The site supervisor summoned Manager Havran who drove to the job site and picked-up the claimant to take him an hour drive to his car. Claimant told Havran he was quitting.

The employer did not personally participate in department fact finding but it submitted written documents to consider the employment separation issue. Claimant has received benefits on his unemployment claim for a twelve-week period from August 4, 2013 through the week ending October 26 totaling \$4,65600..

The department decision record shows claimant worked for Ricklef's Excavating LTD during the third quarter of 2012.

### **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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on March 12, 2013 due to job dissatisfaction.

The claimant chose to quit his job when he learned that he would be joining an excavating crew and traveling to job sites. While this is a good personal reason for leaving employment, it is not a good cause attributable to the employer. Since claimant advised the employer in his job application he was willing to travel to different jobs this is not a good cause or the type of work as he had prior employment with an excavation business.

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 unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

The claimant is overpaid the \$4,656.00 benefits he has received due to the disqualification imposed in this decision. The issue whether he is required to repay it is remanded to claims to determine whether the employer satisfactorily participated in department fact finding with documents.

**DECISION:**

The department decision dated September 5, 2013, reference 02, is reversed. The claimant voluntarily quit without good cause attributable to the employer on March 12, 2013. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$4,656.00 but the issue whether he should repay it is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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