

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRETT J CARTER**  
Claimant

**APPEAL NO. 13A-UI-03389-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEN HARTOG INDUSTRIES INC**  
Employer

**OC: 11/11/12**  
**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Den Hartog, filed an appeal from a decision dated March 14, 2013, reference 02. The decision allowed benefits to the claimant, Brett Carter. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Christine Koreselan and Night Shift Manager Jason Bork.

**ISSUE:**

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

**FINDINGS OF FACT:**

Brett Carter was employed by Den Hartog from January 9 until February 20, 2013 as a full-time oven operator working 8:00 p.m. until 6:00 a.m. He worked with his brother, Adam Carter, who “bulled” him. On February 18, 2013, Brett Carter complained to his supervisor, Travis Schreier who said he would review the matter with Night Shift Manager Jason Bork. The claimant did not specifically ask to be moved to another workstation or have his brother moved.

On February 20, 2013, Adam Carter continued his inappropriate behavior and the claimant went to Mr. Bork’s office. After waiting about 15 minutes the claimant left without notice to anyone. He did not page Mr. Bork or Mr. Schreier, and he did not avail himself of the open door policy and report the matter to human resources. Continuing work was available to him had he not quit.

Brett Carter has received unemployment benefits since filing an additional claim with an effective date of February 17, 2013.

**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.

The claimant quit because his brother was acting inappropriately. It is not clear how much of this was due to their fraternal relationship. Brett Carter did not specifically request to be moved, or have his brother moved, to another workstation. He did not exercise all of his available options, such as talking with Mr. Bork or the human resources department, before walking off the job. In order for good cause attributable to the employer to exist, a claimant must make some effort to give the employer an opportunity to work out whatever problem led to the grievance. By not giving notice to the employer of the circumstances causing the decision to quit employment, the claimant failed to give the employer an opportunity to make adjustments which would alleviate the need to quit. *Denby v. Board of Review*, 567 P.2d 626 (Utah 1977).

The record establishes the claimant did not have good cause attributable to the employer for quitting and he 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 March 14, 2013, reference 02, is reversed. Brett Carter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css