

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN NANIOT
Claimant

APPEAL NO: 09A-UI-07789-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHARD JACOBSON ET AL
Employer

OC: 02-08-09
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 15, 2009, reference 03, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on June 11, 2009. The claimant participated in the hearing. Elizabeth Jerome, Account Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Jacobson Industrial Services last assigned to Factory Direct Appliance from March 16, 2009 to April 10, 2009. If employees are going to be late or absent they are instructed to contact the employer who will pass that information on to the client. On April 6 and 7, 2009, the client notified the employer the claimant called in sick. He did not call the employer. He worked April 8, 2009, but the client called the employer to inform it the claimant was a no-call no-show April 9, 2009. The employer called the claimant at 10:30 a.m. April 9, 2009, and he said he was ill and the employer warned him he needed to call it or he would be considered a no-call no-show. On April 10, 2009, he was a no-call no-show and the client ended his assignment and the employer determined he voluntarily quit his job and was not eligible for rehire.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant was a no-call no-show twice during the week of April 6, 2009, and was a no-call no-show the day after he was warned about being a no-call no-show the day before. The claimant stated he called the client to report his absences but the client is the individual who notified the employer of the claimant's failure to call or show up for work. Consequently, the administrative law judge concludes the claimant was a no-call no-show April 9 and April 10, 2009, and his actions rise to the level of disqualifying job misconduct. Therefore, 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The May 15, 2009, reference 03, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs