

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID COBB
Claimant

APPEAL NO. 11A-UI-12710-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 08-28-11
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 22, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 7, 2011. The claimant participated in the hearing. Jack Bolduan, assistant store manager; Roger May, building materials and millwork manager; and Paul Hammell, store counsel, 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 assistant department manager in the building and millwork department for Menards from April 3, 2008 to August 30, 2011. He was stopped for speeding August 24 or 25, 2011, and drugs were found on his passenger. The claimant was also charged, but those charges were dropped at the beginning of September 2011. The claimant decided to leave his job August 30, 2011, because he was facing 30 days in jail if convicted and he did not want to go to trial and be taken to jail without being able to notify the employer and also did not want to tell the employer about the situation at the time it occurred. He informed Assistant Store Manager Jack Bolduan August 30, 2011, that he felt it would be better to “part ways” at that time. Mr. Bolduan asked him why and the claimant indicated he was leaving for personal reasons, so Mr. Bolduan did not inquire further and the claimant ended his employment that day. Mr. Bolduan testified the claimant was an excellent employee and the claimant stated he did not have any complaints about his job.

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 left his job for personal reasons and his testimony confirmed that statement. He was concerned that due to events in his personal life he might have to serve 30 days in jail and did not want to disclose that to the employer either at the time the incident occurred or wait to see what happened with regard to those charges. As it turned out, he would not have had to tell the employer about the situation at all, as the charges were dropped shortly after he voluntarily ended his employment. The claimant did not leave his employment for good cause attributable to the employer as that term is defined by Iowa law as required to be eligible for unemployment insurance benefits. Therefore, benefits must be 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 September 22, 2011, reference 01, decision is reversed. 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. 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/kjw