

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRENT M BRISEL
Claimant

APPEAL NO. 09A-UI-16352-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 09/27/09
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 19, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 7, 2009. Claimant participated. Employer participated by Chris Juni, safety and human resources manager. The employer was represented by Susan Chimelovsky. The record consists of the testimony of Trent Brisel; the testimony of Jodi Rozendaal; the testimony of Chris Juni; and Employer's Exhibits 1-12.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case manufactures interior and exterior doors. The claimant has had two different stints of employment. The second stint began on April 23, 2007. After approximately a year, the claimant was promoted to exterior operator position. This resulted in an increase in pay per hour. On September 9, 2009, the claimant was demoted. The reason for the demotion was due to low production numbers and continued issues with the claimant not being able to run and lead his production line. (Exhibit 5). The claimant was moved back to the general pay rate of \$11.00 per hour.

The claimant had a difficult working relationship with the group manager, Cory Wirth. The claimant felt that Mr. Wirth harassed him by constantly looking over his shoulder. In addition, the claimant felt that he was doing some jobs for which he should be paid at the higher rate even though he knew he had been demoted and his pay reduced. The claimant went to speak to Human Resources and was told to talk to the production manager, Travis Smith. The claimant felt Mr. Smith also ignored his problems. The claimant did not come to work on

September 29, 2009. On September 30, 2009, he quit his job at the beginning of his shift due to stress he was suffering from Mr. Wirth's treatment of him.

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(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of employment. He intended to quit his job and did so by telling his employer that he was quitting. The claimant was unhappy about the demotion and the resultant loss of pay. He also felt that Cory Wirth, his supervisor, was harassing him. He wanted Mr. Wirth to leave him alone. He felt stressed out by the job.

Although the claimant may have had good personal reasons for quitting his job, these reasons are not considered by law to be good cause attributable to the employer. The main reason that the claimant elected to leave his job was his problems working with his supervisor. Iowa law states that if a claimant leaves his job due to a personality conflict with a supervisor, it is not considered good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits. 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 issue of whether the claimant has been overpaid benefits is remanded to the claims section.

DECISION:

The decision of the representative dated October 19, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs