

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTON A NOREM**  
Claimant

**L A LEASING INC**  
**SEDONA GROUP**  
Employer

**APPEAL NO. 14A-UI-04137-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/23/14**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(27) – Job Refusal  
Section 96.3-7A,B – Overpayment Recovery

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated April 16, 2014, reference 01, that held the claimant was not discharged for misconduct on March 25, 2014 and benefits are allowed. A hearing was held on May 8, 2014. The claimant did not participate. Colleen McGuinty, UI Benefits Administrator, and Shelby Kingery, Office Manager, participated for the employer.

**ISSUES:**

The issue is whether the claimant was discharged for misconduct.

The issue is whether claimant is overpaid unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant began employment on August 27, 2011 and most recently worked an assignment at Markman Pete Company for one day on April 4, 2014. Claimant called the employer and stated he was quitting because he did not like the work environment. The employer offered claimant other work assignments but he refused.

Claimant received an unemployment benefit of \$173 for the week ending April 19, 2014 on his claim. There is no evidence of any fraud or misrepresentation to obtain this benefit. Claimant failed to respond to the hearing notice with a call to UI Appeals requesting to be contacted at a phone number for this hearing pursuant to the C2T control system.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The administrative law judge concludes claimant voluntarily quit without good cause on April 4, 2014 when he refused to work an assignment.

While the department issued a decision claimant's employment separation occurred on March 25, 2014, the employer offered credible testimony claimant accepted an assignment and worked a full day on April 4. His decision to quit this assignment with a continuing rejection of other work assignments is a voluntary quit without good cause attributable to the employer.

Iowa Code § 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 administrative law judge further concludes claimant is overpaid benefits \$173 for the week ending April 19, 2014 due to the disqualification imposed in this decision. Although there is no evidence of claimant fraud or misrepresentation to obtain the benefit, the issue whether claimant must repay the overpayment is remanded. The employer submitted a written information protest to the claim, and this issue is whether it is adequate to require claimant repayment of the overpayment.

**DECISION:**

The decision of the representative dated April 16, 2014, reference 01, is reversed. The claimant voluntarily quit without good cause on April 4, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The issue whether claimant is required to repay the \$173 overpayment is remanded.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/pjs