

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MYRON D VANBOCHOVE**  
Claimant

**APPEAL NO. 10A-UI-08038-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEN HARTOG INDUSTRIES INC**  
Employer

**Original Claim: 02/21/10  
Claimant: Appellant (4)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Den Hartog Industries (employer) appealed a representative's May 27, 2010 decision (reference 04) that concluded Myron Vanbochove (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 16, 2010. The claimant participated personally. The employer participated by Christine Koerselman, Human Resources Generalist.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 15, 2010, as a full-time metal fabrication operator. The claimant quit work on March 25, 2010, to take other employment. Continued work was available had the claimant not resigned. The claimant started work on April 5, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons, the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits for the one week period ending April 3, 2010.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

The claimant left his position with the employer to work for another employer. When an employee quits work to take other employment, he is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. He voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged. The claimant is not eligible to receive unemployment insurance benefits for the one-week period ending April 3, 2010, because he could have continued to work for one more week with the employer before his new employment started.

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 benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

**DECISION:**

The representative's May 27, 2010 decision (reference 04) is modified in favor of the appellant. The claimant voluntarily left work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits, because he quit to take other employment, except for the one-week period ending April 3, 2010. The employer will not be charged. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw