

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOSH WILHELME**  
Claimant

**TEAM STAFFING SOLUTIONS INC**  
Employer

**APPEAL NO. 14A-UI-11722-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/19/14**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Team Staffing Solutions, Inc. (employer) appealed an unemployment insurance decision dated November 10, 2014, (reference 01), which held that Josh Wilhelme (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2014. The claimant participated in the hearing. The employer participated through Sarah Fiedler, Human Resources Generalist and Mary Kirchner, Account Manager. Employer's Exhibits One and Two were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time, temporary employee assigned to Wilton Precision Steel from March 27, 2014, through October 7, 2014. He sustained a work-related injury on July 30, 2014, which he reported on August 4, 2014. The client company was accommodating his work restrictions. The claimant was released without restrictions from the treating physician on October 6, 2014. He went to work on October 7, 2014, but told the client company he could not perform his job so the client company sent the claimant back to the employer. The claimant was not satisfied with the doctor's conclusions. The employer told the claimant that he had been released to return to work and the job was there for him if he wanted it. However, the claimant left the employer's office without comment and the employer considered his actions to be a voluntary quit.

The claimant later called the employer's office that same day to obtain a medical appointment. He was seen by the treating physician on October 10, 2014, and the doctor reported that the claimant could return to his normal duties at Precision Steel. The claimant did not check in for

additional work until October 13, 2014, and thereafter but the employer considers that he quit his assignment.

The claimant filed a claim for unemployment insurance benefits effective October 19, 2014, and has received benefits after the separation from employment in the amount of \$1638. Human Resources Generalist Sarah Fiedler sent in documents to the fact-finder and Account Manager Mary Kirchner participated in the interview on behalf of the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by refusing to perform his job duties on October 7, 2014, after he had been released without medical restrictions. He further carried out that intent when he left the employer's office after it was explained the job was there for him if he wanted it.

The claimant had been released without restrictions by the treating physician. He did not even attempt to perform his job duties on October 7, 2014, but simply refused. He contends the physician put down false statements in the medical report. The preponderance of the evidence demonstrates the claimant chose not to perform work even though he was able to do so.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$1638 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

**DECISION:**

The unemployment insurance decision dated November 10, 2014, (reference 01), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$1638 in unemployment insurance benefits.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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