

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD ROZEN**

Claimant

**APPEAL NO: 11A-UI-02911-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHUKEI CHEVROLET INC**

Employer

**OC: 01/02/11**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Schukei Chevrolet, Inc. (employer) appealed an unemployment insurance decision dated March 8, 2011, reference 02, which held that Chad Rozen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on April 11, 2011. The claimant participated in the hearing. The employer participated through owner Steve Schukei and former employee Pat Rozen. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time salesperson from October 13, 2010 through January 6, 2011 when he was considered to have voluntarily quit his employment. He was evicted from his home on December 27, 2010 and called the employer to report he would not be at work. The claimant spoke with his uncle, Pat Rozen, who was the sales manager. Mr. Rozen told him to take the time he needed. The claimant and his uncle spoke several times by phone or text message. The claimant left a text message for his uncle on December 29, 2010 stating that he still could not report to work and Pat Rozen left messages for the claimant but he did not respond. Pat Rozen stopped hearing from the claimant and he sent the claimant a text message on December 31, 2010 which stated, "So now you don't even call in?" The claimant never responded and finally on January 6, 2011 the employer determined he had quit since he had not called or spoken to the employer since December 30, 2010.

The claimant filed a claim for unemployment insurance benefits effective January 2, 2011 and has received benefits after the separation from employment.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends he was fired but the evidence does not support his contention. The parties were both friendly and cooperative during the hearing but provided contradictory testimony. Consequently, Pat Rozen was called during the hearing and without advance notice; he graciously agreed to participate. He was formerly the sales manager for the employer and is also the claimant's uncle. He had saved all of his text messages so was given a few minutes and then called again since he could not access his text messages while he was on the phone. Pat Rozen subsequently provided detailed text messages and said he could bring his phone up to the Workforce office if necessary. The claimant had no phone records since he had changed providers. Pat Rozen's testimony was found credible and unbiased and was therefore relied upon.

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 carried out that intent when he failed to call, text or show up for work after December 30, 2010. He contends he was fired but no one fired him. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated March 8, 2011, reference 02, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs