

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE M JENSEN**  
Claimant

**APPEAL NO. 130-UI-11362-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA TRENCHLESS LLC**  
Employer

**OC: 01/06/13**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 3, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2013, and was remanded for further evidence taken at a hearing on November 1, 2013. Claimant participated. Employer participated through secretary ,Melissa Bailey and company president, Jason Clark. Employer's Exhibits 1 - 4 were received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a job site foreman/machine operator/welder/truck driver (at \$20.00 per hour) on the road and was separated from employment on May 13, 2013. He did not like working away from Panora or in the shop because of his child. He obtained many of his skills and certifications while employed at Iowa Trenchless. His last day of work was January 6, 2013, when he was laid off temporarily for the season. On April 30 claimant reported to a meeting in the office to discuss recall to work on May 13. He was going to school for marketing from January to May in 2012, and 2013, and returned to work when his school term ended in early May, 2012. Clark did not tell him he could work scrubbing augers for a toothbrush at \$8.00 per hour. Claimant told Clark he did not want to return to work for him and indicated he may go to work in a different field of work or maybe start a business because he wanted to spend more time with his child. Clark told him he would not be eligible for unemployment insurance (UI) benefits after May 13 if he did not return by then. Claimant did not pass any of the eight classes he was taking for the apprenticeship on February 23, 2013, and did not retake

them. They were not required to return to work or continue working, but employer surmised that was another reason claimant did not return to work or return calls. Clark made outgoing calls to claimant on April 28, April 30, May 15 (twice), May 16 (twice), and May 17. (Employer's Exhibit 2) Other calls were made from the office phone that does not have itemized calls. Claimant did not return the calls. The employer recalled other workers and advertised for and hired new employees. (Employer's Exhibit 1) Claimant is eligible to reapply for work in early April 2014.

Claimant received unemployment benefits since filing a claim with an effective date of January 6, 2013.

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

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

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.

Employer's testimony that it did not discharge claimant or fail to recall him to work is credible because of the multiple calls made to claimant's phone in April and May 2013. Claimant's decision to quit for personal reasons rather than return to work from a layoff is a disqualifying. Since claimant quit knowing he could have returned to work, the issue of the recall is moot. Even were it relevant, claimant's decision not to return to his regular job at the same terms when the season began in 2013, was disqualifying. Benefits are denied.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law 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. However, the overpayment may not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The June 3, 2013 (reference 01) decision is reversed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**REMAND:** The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css

**NOTE TO EMPLOYER:**

If you wish to remove the street address from the address of record, please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>. Helpful information about using this site may be found at: <http://www.iowaworkforce.org/ui/uiemployers.htm> and <http://www.youtube.com/watch?v=mpCM8FGQoY>