

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUAN DE LA GARZA**  
Claimant

**APPEAL NO: 12A-UI-10762-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACADEMY ROOFING & SHEET METAL CO**  
Employer

**OC: 01-01-12**  
**Claimant: Appellant (1R)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 30, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 1, 2012. The claimant participated in the hearing. Diane Parker, Director of Human Resources and Dan Loupee, Superintendent, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time roofer for Academy Roofing & Sheet Metal from August 2, 2011 to April 11, 2012. He was a no-call/no-show April 9, 10 and 11, 2012. The employer attempted to call him four times and was able to leave a message on one of those occasions asking the claimant to call him but the claimant did not respond. The claimant was previously a no-call/no-show December 8 through 10, 2011; February 2 and 13 and March 24, 2012. The employer's business can be sporadic depending on business needs and weather and employees know that is the nature of the business. If the employer will not have work for the crew for a few days it notifies them ahead of time and gives them an estimated day of return to work. When employees are going to be working the employer calls them at least 24 hours in advance to inform them to return to work. The claimant maintains the employer did not have any work for him and either laid him off or terminated his employment. He also states he has not worked for the employer at all in 2012. That statement is contradicted by Employer's Exhibit One which shows the claimant worked 303.50 hours in 2012 between January 1 and April 8, 2012, 303.50 hours before voluntarily leaving his employment. The employer had continuing work available.

The claimant has claimed and received benefits without reporting any wages since the week ending January 7, 2012. The Claims Section is aware of the overpayment through the week

ending January 7, 2012. There are overpayment issues after that date that need to be determined.

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

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

Iowa Code section 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.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

While the claimant asserts he was either laid off or his employment with Academy Roofing & Sheet Metal was terminated, he could not explain, especially given the nature of the employer's business, why he did not contact the employer for continued work after April 3, 2012, which was his last day worked. He could also not explain who terminated his employment or why. The claimant's testimony was not credible, as evidenced by Employer's Exhibit One, which demonstrated the claimant worked 303.50 hours this year between January 1 and April 9, 2012, when the claimant stated he has not worked at all. The employer credibly testified the claimant failed to call or show up for work April 9 through April 13, 2012. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

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 will 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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment after the week ending April 7, 2012, and whether

the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The August 30, 2012, reference 03, decision is affirmed. The claimant voluntarily left his 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. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment after the week ending April 7, 2012, and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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