

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WEYLIN J BRUNEAU
Claimant

APPEAL NO. 08A-UI-03965-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILSON TRAILER CO
Employer

**OC: 11/25/07 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a notice of a representative's decision dated April 15, 2008, reference 03, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on May 7, 2008. Although duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by John Kreber, director of human resources, and John Newell, assistant service manager.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from January 22, 2008, until March 13, 2008, when he voluntarily quit his employment by failing to report for available work. Mr. Bruneau was employed as a full-time mechanic laborer and was paid by the hour. His immediate supervisor was John Newell. Mr. Bruneau discontinued reporting for scheduled work on March 11, 2008, and did not report for three or more consecutive workdays thereafter. The employer reasonably concluded the claimant had voluntarily quit his employment when he did not report for available work. Prior to failing to report for scheduled work and providing no notification to the employer, the claimant had called in absent for several days. Subsequently, the claimant reported to the employer's facility to pick up his tools but provided no reason for leaving his employment. There was no change in the original agreement of hire at the time the claimant chose to leave available employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant left his employment with good cause for reasons attributable to the employer. He did not.

The evidence in the record establishes that the claimant voluntarily quit employment by discontinuing to report for scheduled work for three or more consecutive workdays. The claimant had previously called in for a number of days, indicating he was ill. Effective March 11, 2008, the claimant did not provide notification of his impending absences thereafter. Although the claimant continued to be scheduled for a number of workdays, he did not report or notify the employer.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily quit employment for reasons not attributable the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,041.00.

DECISION:

The representative's decision dated April 15, 2008, reference 03, is hereby reversed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,041.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw