

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY R STICK**  
Claimant

**B P ENTERPRISES INC**  
Employer

**APPEAL 15A-UI-14183-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/22/15**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

B P Enterprises, Inc. (employer) filed an appeal from the December 15, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon the determination it failed to provide sufficient evidence to show it discharged Jeremy Stick (claimant) for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2016. The claimant did not participate. The employer participated through Co-Owner Steve Britten, Manager Chris Black, and Lube Tech Aaron Carey. Employer's Exhibit 1 was received.

**ISSUES:**

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

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Hood Tech beginning on June 5, 2013. The claimant received multiple warnings for alcohol consumption while working early in his employment. On July 8, 2015, the claimant was discharged but given the option to return to his employment if he completed treatment for his addiction. The claimant received treatment and was rehired into his position on August 24, 2015 with the stipulation that any further incidents of alcohol use on the job would result in his discharge. The claimant's last day worked was September 18, 2015.

On September 18, 2015, the claimant's co-worker Lube Tech Aaron Carey picked him up for work. At that time, the claimant was sober. At 9:30 a.m., the claimant asked to borrow Carey's car to get breakfast. After some time, Carey could not find his car or the claimant. He went out to the parking lot and found the claimant in his vehicle. The claimant was incoherent, disoriented, and his head was lolling back and forth. Carey notified Co-Owner Steve Britten who directed Carey to drive the claimant home. Britten did not tell the claimant he was discharged and expected him to return to work the following day. The claimant did not return to work the following day or for any of his scheduled shifts that week. When he did return a week later, it was not to work his scheduled hours but to pick up his last check and apologize for his behavior.

The administrative record reflects that the claimant has not received any unemployment benefits since filing a claim with an effective date of November 22, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant was sent home from work on September 18, 2015 due to his conduct at work. The employer had previously told the claimant that his conduct would result in his discharge, but no one told the claimant he was discharged on September 18, 2015 and he was expected back

to work the following day. Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since the claimant did not follow up with management personnel or the owner and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Accordingly benefits are denied.

The claimant's separation is disqualifying. However, he has not received any benefits since his claim effective date. Therefore, the issues of overpayment, repayment and the chargeability of the employer's account are moot.

**DECISION:**

The December 15, 2015, (reference 01) unemployment insurance decision is reversed. The 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. As the claimant has not received any benefits since filing his claim effective date, the issues of overpayment, repayment and the chargeability of the employer's account are moot.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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