

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMAN HIRSCHY
Claimant

APPEAL NO: 07A-UI-03514-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFCO OUTSOURCE MANAGEMENT
Employer

OC: 03-04-07 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 28, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 19, 2007. The claimant participated in the hearing. Teresa Jacobs, Human Resources Coordinator and Kelly Grave, Employer Representative, 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 with good cause attributable to the employer.

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 production specialist for Staffco Outsource Management from July 1, 2006 to February 2, 2007. On February 2, 2007, employee Joseph Trejo was confronted about being intoxicated at work. He stated he was not under the influence of alcohol but had been using methamphetamine and marijuana with the claimant and a supervisor. The employer asked the claimant to submit to a reasonable suspicion drug test and the claimant refused, stating he knew he would not pass. He wrote a resignation letter and voluntarily left his employment rather than take the drug test (Employer's Exhibit One). He testified he knew he would not pass because he used marijuana occasionally, but never before or during work, and quit rather than take the test because he was on probation.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. In this case the claimant was confronted with the choice of taking a drug test or losing his employment and rather than fail the test he chose to resign his position with the employer. Regardless of whether the claimant quit or would have had his employment terminated, the fact remains that the claimant refused the drug test in violation of the employer's policy and submitted a resignation letter. Consequently, the administrative law judge concludes the claimant voluntarily left his employment and has not demonstrated that his leaving was for good cause attributable to the employer. Benefits are denied.

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.

DECISION:

The March 28, 2007, reference 01, decision is reversed. 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 is overpaid benefits in the amount of \$1,065.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs