

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH L BARRETT**  
Claimant

**APPEAL NO. 12A-UI-00781-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHUSTER GRAIN CO INC**  
Employer

**OC: 12/11/11  
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Schuster Grain Company, Inc. (Schuster), filed an appeal from a decision dated January 19, 2012, reference 01. The decision allowed benefits to the claimant, Kenneth Barrett. After due notice was issued, a hearing was held by telephone conference call on February 21, 2012. The claimant participated on his own behalf. The employer participated by Director of Human Resources Erica Wenzel.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Kenneth Barrett was employed by Schuster from May 4, 2005 until October 21, 2011 as a full-time over-the-road truck driver. On October 21, 2011, he was in the terminal office and spoke with Director of Human Resources Eric Wenzel and General Manager Jeff Arens. He said his mother had recently died and his head was “just not in the truck.” He needed to get away “before [he] kill somebody.”

Ms. Wenzel asked if he meant for a few days or longer and he said he did not know. She offered him a leave of absence but he said he could “just not deal with” the situation at the time and he was going to go clean out his truck.

A few days later Ms. Wenzel sent Mr. Barrett the standard COBRA letter explaining his right to continue medical insurance. The letter “due to recent termination” and the claimant assumed he had been fired although no one at Schuster had ever told him he was fired. Instead of calling Ms. Wenzel to discuss the situation he refused to keep in touch. If he had called he would have been told he was not fired and the employer would welcome him back whenever he was ready to return because he was a valued employee.

Kenneth Barrett has received unemployment benefits since filing a claim with an effective date of December 11, 2011.

## REASONING AND CONCLUSIONS OF LAW:

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 believes he was fired because the COBRA letter stated his employment had terminated. At no time did anyone tell him he was fired and would not be welcomed back. He seems to believe he requested a leave of absence from another employee but only Ms. Wenzel and Mr. Arens can approve such requests. He did not ask either one of them for a leave even though they made it clear that he was a good employee and they would want him to continue when he felt he could once again drive.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. IDJS*, (Unpublished, Iowa App. 1984). The administrative law judge considers the reasoning in that case to be pertinent here. The claimant is a voluntary quit without good cause attributable to the employer and he is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of January 19, 2012, reference 01, is reversed. Kenneth Barrett is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css