

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT RATHBONE**  
Claimant

**APPEAL NO. 07A-UI-03820-E**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**AL GORDON PLUMBING & HEATING LC**  
Employer

**OC: 02-25-07 R: 03  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 4, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 6, 2007. The claimant participated in the hearing. Al Gordon, Owner, and Kevin Kamienski, Accountant, participated in the hearing on behalf of the employer.

**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 heating and air conditioner installer for Al Gordon Plumbing & Heating LC from May 6, 1997 to March 21, 2007. At the beginning of January 2007 the employer told the employees work was slowing down and if they had other projects they wanted to work on, "now would be a good time." The claimant decided to take some time off work to do some work for another contractor for a few days and did not return to the employer following completion of that assignment. The six or so other employees continued to work for the employer and averaged 39.5 to 40.0 hours per week. During this time frame, the employer continued to cover the claimant's health benefits, cellular phone, and uniforms until it received notice that the claimant had filed for unemployment insurance benefits March 16, 2007. The employer also contacted the claimant Friday, March 16, 2007, about returning to work; but when the claimant had not contacted the employer by March 21, 2007, the employer considered the claimant to have voluntarily quit his job. The claimant testified he received the message from the employer on March 16, 2007, and he was going to call back Monday or Tuesday but it "slipped his mind."

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). 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. The employer offered employees a few days off in January 2007 but fully expected the claimant to return to work after a few days. The claimant chose not to contact the employer to find out how much work was available or return to work and work the available hours, but instead chose to file for unemployment insurance benefits. When the employer got notice that he had filed for benefits, it called him Friday, March 16, 2007, to ask him to return to work; but although the claimant received the message, he did not call the employer back Monday or Tuesday because it "slipped his mind." Under these circumstances, the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, 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 April 4, 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 \$3,443.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw/pjs