

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIE J INGRAM**  
Claimant

**APPEAL NO. 09A-UI-15452-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER TRUCK LINE INC**  
Employer

**Original Claim: 09/20/09  
Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated October 8, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 17, 2009. The claimant participated. The employer participated by Sandy Loney, director of human resources; Karl Westfall, terminal manager Birmingham, Alabama; and Bernadette Waller, dispatcher. The employer was represented by Jenny Smith, attorney at law. The record consists of the testimony of Sandy Loney, the testimony of Karl Westfall, the testimony of Bernadette Waller, the testimony of Willie Ingram, and Employer's Exhibits 1 and 2.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a transportation company located in Fort Dodge, Iowa. The claimant was hired on August 17, 2007, as an over-the-road truck driver. His last day of work was May 7, 2009.

On May 7, 2009, the claimant was dispatched on a load by his dispatcher, Bernadette Waller. The claimant had previously requested a partial day off on May 8, 2009. He wanted to go home to South Carolina. After receiving the dispatch, the claimant asked to have May 8, 2009, off entirely. The claimant was told that the load was going to a location about 80 miles from his home and that he could be home early on May 8, 2009. The claimant did not pick up the load. Another driver had to be dispatched. The claimant spoke to Karl Westfall and asked for a load to Birmingham so that he could bring back the truck.

There was no contact with the claimant until May 11, 2009, when Sandy Loney spoke to him. The claimant told Ms. Loney that he had quit and had already started a new job with another company. The claimant did not return the truck to the employer and it had to be picked up at the claimant's home in South Carolina.

The claimant had taken a DOT mandated drug screening on May 5, 2009. The medical review officer made numerous attempts to contact the claimant concerning the test. The claimant did not return any of these calls to the medical review officer.

### **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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The greater weight of the evidence in this case is that it was the claimant who initiated the separation of employment. The claimant failed to pick up a load after being dispatched and then asked for a load that would enable him to return the truck to Birmingham, Alabama. On May 11, 2009, the claimant told Ms. Loney that he had quit and already had another job. Ms. Loney received an inquiry from a trucking firm in South Carolina asking for verification of the claimant's prior employment with Decker Trucking. In addition, the claimant did not respond to messages left for him by a medical review officer concerning a drug test he had taken on May 5, 2009, as required by DOT regulations. The claimant's conduct evidenced a desire on his part to sever the employer/employee relationship and overt actions to carry out that intent.

The claimant testified at the hearing that he did not quit but was terminated. He said that he was attending to a family emergency that involved the death of a family member. This testimony is not credible. He never told the employer about any family emergency even though he spoke to his dispatcher; the terminal manager; and the human resources manager.

The evidence showed that the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits. 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 issue of overpayment of benefits is remanded to the claims section for determination.

**DECISION:**

The representative's decision dated October 8, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of overpayment of benefits is remanded to the claims section.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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