

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GENE A INMON**  
Claimant

**APPEAL NO: 06A-UI-08945-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST SIDE TRANSPORT INC**  
Employer

**OC: 07/30/06 R: 12  
Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

West Side Transport (employer) appealed a representative's August 28, 2006 decision (reference 01) that concluded Gene Inmon (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2006. The claimant participated personally. The employer participated by Barb Teply, Human Resources Specialist.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 17, 2004, as a full-time truck driver. The claimant worked away from home for two weeks and then had two weeks off. On July 31, 2006, the claimant's ex-wife died. The claimant and his ex-wife have three sons ages 12, 14 and 15. The claimant quit work on August 1, 2006, to take care of his sons. Continued work was available had the claimant not resigned.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

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.

871 IAC 24.25(17) 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:

- (17) The claimant left because of lack of child care.

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's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work to take care of his children, his leaving is without good cause attributable to the employer. The claimant left work to take care of his sons. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without 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.

The claimant has received benefits in the amount of \$2,647.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's August 28, 2006 decision (reference 01) is modified in favor of the appellant. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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 \$2,647.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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