

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SETH E COOK**  
Claimant

**APPEAL NO: 10A-UI-17507-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE STAFFING SERVICES INC**  
Employer

**OC: 10/24/10**

**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Riverside Staffing Services, Inc. (employer) appealed a representative's December 16, 2010 decision (reference 01) that concluded Seth E. Cook (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Karrie Minch appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant began taking assignments with the employer's Davenport, Iowa office on March 25, 2010. His final assignment began on October 14, 2010. He was to work full time as a general laborer at the employer's Milan, Illinois business client. His last day on the assignment was October 15, 2010. The assignment ended because the claimant contacted the employer on October 18 and indicated he was not going to return to the assignment. His reason for leaving the assignment was because he did not wish to stand all day. The business client had attempted to allow the claimant to move around to other areas of its facility so he was not standing in one area all day, but the claimant still determined to leave the assignment. The claimant's prior assignments had all involved standing, and he had been aware before accepting this assignment that it also involved standing. There was no evidence of any medical condition which would have prevented or impaired the claimant from being able to stand all day.

The claimant established a claim for unemployment insurance benefits effective October 24, 2010. The claimant has received unemployment insurance benefits after the separation.

Some information was provided by the employer that it may have made an offer of work to the claimant on December 14, 2010 which was declined.

**REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

An issue as to whether the claimant may have refused an offer of work arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue, although given the disqualification on the separation, the subsequent refusal is probably moot. 871 IAC 26.14(5).

**DECISION:**

The representative's December 16, 2010 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 18, 2010, benefits are withheld until such time as 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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