

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMAN D OLSON
Claimant

APPEAL NO. 13A-UI-06645-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COX MANUFACTURING COMPANY
Employer

OC: 05/05/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 24, 2013, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 19, 2013. Claimant participated. Employer participated by Rob Cox, President Owner; Shelly Groves, Office and Human Resource Manager and Dick Dalton, General Manager. Exhibits One and Two were admitted into evidence.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 29, 2013. Claimant quit work because employees were smoking in the building. The employer prohibits smoking in the buildings. Claimant complained to Mark Heston, Plant Manager.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because employer allowed employees to smoke in a no smoking area. This is a detrimental work environment. Employer failed to provide first hand testimony from the plant manager to explain the complaints. Employer failed to take prompt remedial action after receiving the smoking complaints. As such, claimant's version is found correct as it is from sworn testimony. Claimant's sworn testimony is more credible than hearsay offered by employer. Benefits allowed.

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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

DECISION:

The decision of the representative dated May 24, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs