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

**JOEY J LARSON**
Claimant

**APPEAL NO.  10A-EUCU-00647-MT**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**STORAGE & DESIGN GROUP INC**
Employer

**OC:  10/28/07**
**Claimant:  Respondent  (2-R)**

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 July 23, 2010, reference 01, which held claimant eligible for unemployment insurance benefits.  After due notice, a telephone conference hearing was scheduled for and held on September 23, 2010.  Employer participated by Josh Patterson, Installation Manager.  Claimant failed to respond to the hearing notice and did not participate.  Exhibit One was 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 having considered all of the evidence in the record, finds:  Claimant last worked for employer on November 30, 2009.  Claimant was working part-time on an as-needed schedule.  Claimant asked that his hours be reduced.  Claimant worked less and less until he finally stopped coming to work.  Claimant did not give a reason for wanting reduced hours.  Continued work was available if claimant had not quit.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he stopped coming to work.  This is a quit without good cause attributable to employer.  Benefits withheld.  However, since claimant quit part-time work, he still may be eligible based on credits from other employment.

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 24.27 provides:

Voluntary quit of part-time employment and requalification.  An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment.  The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment  Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes.  For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The next issue concerns an overpayment of unemployment insurance 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.

This matter is remanded to the claims section for determination of an overpayment.

**DECISION:**

The decision of the representative dated July 23, 2010, reference 01, is reversed and remanded for determination of overpayment. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, unless claimant is otherwise eligible. This matter is remanded to claims section for determination of overpayment and for determination of eligibility based on credits from other employment.


_____
Marlon Mormann
Administrative Law Judge


_____
Decision Dated and Mailed


mdm/kjw