

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY MCCRACKAN
Claimant

APPEAL NO: 11A-UI-13042-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 07/24/11
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. (employer) appealed an unemployment insurance decision dated September 30, 2011, reference 01, which held that Larry McCrackan (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 22, 2011. The claimant participated in the hearing. The employer participated through Sarah Fieldler, Claims Administrator. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him 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 employed as a full-time, temporary general laborer from February 28, 2011 through July 21, 2011. He lives in Florida but came to Iowa for temporary employment. The claimant was assigned to Roquette America in an ongoing assignment. There was continued work available with the employer and he was even offered permanent placement with the client company, but he resigned to go back to Florida.

The claimant testified that the client company told the temporary employees that they estimated there would be another two weeks of work or the temporary employees could choose to leave. He chose to leave but does not consider that he voluntarily quit his employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment

insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by choosing to stop working after July 21, 2011 even though there was work available.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated September 30, 2011, reference 01, is reversed. 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs