

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY BUSS**

Claimant

**APPEAL NO: 09A-UI-09148-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AABACO HOLDINGS LTD**

Employer

**OC: 05-10-09**

**Claimant: Respondent (2R)**

Section 96.5-1 - Voluntary Leaving  
Section 96.3-7 - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 18, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on September 29, 2009. The claimant participated in the hearing with Attorney John Rausch. Roger Bockes, Owner/Secretary/Treasurer, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time welder for Heavy Equipment Manufacturing from February 11, 1998 to May 10, 2009. The employer sent some heavy equipment to Long View, Texas, in early May 2009 and also sent some employees to help the customer with training. The customer called the employer May 6, 2009, and said there were structural failures with the machine. The owner of the company and his brother drove to Texas that night and saw the equipment the following morning. The employer agreed there were structural failures so arrangements were made to bring the equipment back to Iowa to fix it. The owner called the shop and warned the employees that they would be working at least Friday and Saturday, and maybe even Sunday, May 10, 2009, so the work could be completed. The shop foreman subsequently overheard the claimant telling another welder that he refused to come in Friday, May 8, 2009, to fix some other guy's welding problem. The claimant tried to get the other welder to stay home too. The co-worker reported the claimant's comments to the employer May 8, 2009. The claimant was a no-call/no-show Friday, May 8, Saturday, May 9, and Sunday, May 10, 2009. The employer's policy provides that an employee is considered to have voluntarily quit after three consecutive days of no-call/no-show. The employer called the claimant Sunday, May 10, 2009, and asked him to come in at 3:30 p.m. for a discussion. The claimant called back and said 3:30 p.m. would not work and asked if he could come later and the employer agreed. The claimant called a second time and asked if he was fired and the

employer told him that he had voluntarily quit. He had previously received warnings for attendance.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 failing to call or report to work for three days ending May 10, 2009. He was needed to work on a special project May 8, 9 and 10, 2009, but refused to do so. He also tried to persuade another welder to stay home those three days as well. The claimant's separation was without good cause attributable to the employer. Therefore, 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of

determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The June 18, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css