

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN JOHNSON**  
Claimant

**APPEAL NO. 08A-UI-07470-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUBER SLATS INC**  
Employer

**OC: 07/20/08 R: 03**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Huber Slats, Inc. (employer) appealed an unemployment insurance decision dated August 14, 2008, reference 01, which held that John Johnson (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 September 9, 2008. The claimant participated in the hearing. The employer participated through owner Bill Huber and Zana Ennis, Bookkeeper. 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 general laborer from October 30, 2006 through July 18, 2008 when he voluntarily quit. He was involved in an altercation with co-worker Ryan Bahrke on approximately July 10, 2008. Mr. Bahrke is known for being mouthy and was yelling at the claimant. He told the claimant that he was going to kill the claimant and/or his family. The claimant went to work in a different area at that time but testified this threat prompted him to quit his employment. He told the employer either that day or the next day that he was going to quit because, "no one should have to put up with that" and worked for another week before leaving. The claimant did not report the threat to the employer because he believed the employer knew about it. Likewise, he did not contact the police about it but reported to work the very next day and worked right next to Mr. Bahrke without problem.

The work site was across the street from the claimant's house but he believed the working conditions were intolerable. The work site did not have good drinking water, there were tools with electrical shorts and employees threw rebar wire on the ground instead of the trash. The

claimant was also upset because there were no specified break times but the owner said that employees stopped when they needed to do so.

The claimant filed a claim for unemployment insurance benefits effective July 20, 2008 and has received benefits after the separation from 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 when he told the employer he quit. He contends he quit due to intolerable working conditions but mostly because a co-worker threatened him and his family. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). The evidence provided by the claimant does not rise to an intolerable work environment even though it may have felt that way to the claimant. Furthermore, the claimant does not appear to have been bothered by his co-worker's threat. He did not report it to the employer at the time it happened, he did not report it to the police and he returned to work the next day and worked side by side with the same co-worker. The claimant's separation cannot be attributed to the employer.

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 August 14, 2008, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css