

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESUS ZARAGOZA

Claimant

APPEAL NO. 11A-UI-02382-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING CO LC

Employer

OC: 02/18/11

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Jacobson Staffing Company, LC (employer) appealed an unemployment insurance decision dated February 18, 2011, reference 03, which held that Jesus Zaragoza (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 March 23, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer participated through Nate Cloe, assistant operations manager. Based on the evidence, the arguments of the party, 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 having considered all of the evidence in the record, finds that: The claimant was hired on March 22, 2010 for a temporary assignment from March 22, 2010 through March 26, 2010. He was placed at Titan Tire for a long-term, ongoing assignment on December 7, 2010 and he worked through December 17, 2010. The claimant was a no-call/no-show on December 20 and 21, 2010. The employer tried to reach the claimant and left a message for him on December 21, 2010. The claimant returned the call later that afternoon. The employer asked why he had not reported to work and the claimant said there was talk about a strike and he thought it would not be good to work three days without knowing whether he had a job the next week. He was only scheduled to work one more day that week due to the Christmas holiday. However, there was no work stoppage as a result of a strike and the claimant would still be working if he had not quit.

The claimant filed a claim for unemployment insurance benefits effective January 2, 2011 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 her 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 failing to call or report to work after December 17, 2010. He quit because of the possibility of a strike, but there was no stoppage of work and continued work was 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 section 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 section 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 February 18, 2011, reference 03, 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/kjw