

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDAL L DITTMER**  
Claimant

**APPEAL NO. 08A-UI-02824-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 10/28/07 R: 02  
Claimant: Respondent (4)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Lowe's Home Centers (employer) appealed a representative's March 12, 2008 decision (reference 01) that concluded Randal Dittmer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 7, 2008. The claimant participated personally. The employer participated by Allison Lambert, Human Resources Manager, and Robert Storey, Delivery Receiving Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**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 January 24, 2008, as a full-time delivery driver. The employer hired the claimant because he had a Class A Commercial Drivers' License and could drive the flatbed and box trucks. At the interview, the employer told the claimant that he would be driving some of each truck. The claimant understood he would be driving the box truck only occasionally even though he signed for his job description on January 4, 2008. His manager told him he would be driving the straight truck more in the summer. The claimant did not like driving the box truck and delivering appliances. On his last day of work, he and his helper moved a front-load washer into a customers basement without a cart. The claimant was sore the following day. He called the employer on or about February 25, 2008, and quit work. The employer asked the claimant to work a few days more until help could be scheduled. The claimant agreed but did not appear for work. Continued work was available had the claimant not resigned.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because he is dissatisfied with the work environment and leaves rather than performing the assigned work, his leaving is without good cause attributable to the employer. The claimant left work because he did not like his work environment and left rather than performing the work that was assigned. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment that must be repaid.

**DECISION:**

The representative's March 12, 2008 decision (reference 01) is modified in favor of the appellant. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$883.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw