

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD A WILLS

Claimant

APPEAL NO. 08A-UI-06410-HT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

ASTORIA INDUSTRIES OF IOWA INC

Employer

**OC: 06/15/08 R: 03
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Astoria Industries, filled an appeal from a decision dated July 9, 2008, reference 03. The decision allowed benefits to the claimant, Todd Wills. After due notice was issued, a hearing was held by telephone conference call on July 28, 2008 and concluded on August 13, 2008. The claimant participated on his own behalf. The employer participated by Human Resources Manager Tiffany Wolf and General Manager Scott Metzger. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Todd Wills was employed by Astoria Industries from January 28 until June 16, 2008 as a full-time general laborer working 6:00 a.m. until 2:30 p.m. On June 16, 2008, the claimant and another employee, Vladimir, were arguing. General Manager Scott Metzger approached to find out what was going on. During his attempt to investigate, the claimant, who was very upset, said he was “not going to take anymore of this shit” and he was “done.” As he said this, he took his tape measure off his belt and threw it into the tool box. The supervisor then told him he was “done working for Astoria.” As the claimant was leaving, Mr. Metzger asked him to go to the human resources office and talk with Tiffany Wolf, but he refused, punched out, and left.

The claimant had earlier been admonished by CEO Robert Wolf about inappropriate displays of temper. Mr. Metzger had told the claimant and others to stop talking and go back to work. As he turned away, Mr. Wills threw a tool on a bench, which was seen by Mr. Wolf. The CEO asked Mr. Metzger if he had fired the claimant and when he said he had not, Mr. Wolf personally admonished Mr. Wills by saying the supervisor had only been doing his job and it was unacceptable for him to respond by throwing tools around.

REASONING AND CONCLUSIONS OF LAW:

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) and (22) provide:

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.

(22) The claimant left because of a personality conflict with the supervisor.

The claimant maintains he was fired, but there is insufficient evidence in the record to support this. The administrative law judge finds the employer's testimony more credible, especially in light of the fact the claimant had been admonished previously about outbursts of temper. He quit after a verbal altercation with a coworker and being admonished by his supervisor. His burst of temper precipitated his decision to quit. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 9, 2008, reference 03, is reversed. Todd Wills is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw/kjw