

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL H KILCOYNE**  
Claimant

**APPEAL NO. 08A-UI-06610-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWE'S HOME CENTERS INC**  
Employer

**OC: 06/15/08 R: 04  
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated July 10, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on August 4, 2008. Although notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Julie Steinstra and Michael Bryson, store manager.

**ISSUE:**

The issue in this matter is whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 2001 until June 13, 2008, when the claimant voluntarily left employment due to personal dissatisfaction with his job. Mr. Kilcoyne was aware of the nature of the work when he accepted it and no material changes in the conditions of employment took place at or near the time the claimant chose to leave ongoing employment. On June 13, 2008, the claimant handed his work vest to the store manager and Mr. Kilcoyne specifically indicated that he was quitting 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 section 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). The

claimant demonstrated his intent by statements, actions, and demeanor, and turning over his work vest to company management.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him from benefits. See Iowa Code section 96.6-2. The claimant failed to participate in the hearing and has not satisfied that burden. 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 if the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based upon 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 representative's decision dated July 10, 2008, reference 01, is hereby reversed. The claimant quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided he is otherwise eligible. The matter of the overpayment is remanded to Iowa Workforce Development for determination of the amount of the overpayment and whether the overpayment should be recovered.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw