

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE D DAMJANOVIC
Claimant

APPEAL NO. 13A-UI-02350-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAGNER TRUCKING INC
Employer

OC: 01/13/13
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Wagner Trucking, filed an appeal from a decision dated February 25, 2013, reference 01. The decision allowed benefits to the claimant, Mike Damjanovic. After due notice was issued, a hearing was held by telephone conference call on March 26, 2013. The claimant participated on his own behalf. The employer participated by Vice President Alan Wagner.

ISSUE:

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

FINDINGS OF FACT:

Mike Damjanovic was employed by Wagner Trucking from August 6, 2012 until January 14, 2013 as a full-time truck driver. He had missed work January 11 and 12, 2013, then vice president Alan Wagner called him and said he need not report to work on Monday, January 14, 2013, because the truck was being worked on. Mr. Wagner did request him to come to his office on Tuesday, January 15, 2013.

When the two men met Mr. Wagner asked Mr. Damjanovic why he had not been at work the previous Friday and Saturday. The claimant said the job was “not working out” for him. He mentioned applying for a job at another company. Continuing work was available to him had he not quit.

Mike Damjanovic has received unemployment benefits since filing a claim with an effective date of January 13, 2013.

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(3) 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:

(3) The claimant left to seek other employment but did not secure employment.

The claimant quit because he did not like the job and anticipated acquiring other employment in the near future. He also, apparently, did not like the job he was doing but there is no evidence he brought any specific complaints or concerns to the employer prior to quitting.

The record establishes the claimant did not have good cause attributable to the employer for quitting and he 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 February 25, 2013, reference 01, is reversed. Mike Damjanovic is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The question of whether the claimant must repay these benefits is remanded to the UIS division.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll