

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN W COLBURN
Claimant

APPEAL NO. 07A-UI-03874-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 03/11/07 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer, Jeld-Wen, filed an appeal from a decision dated April 6, 2007, reference 01. The decision allowed benefits to the claimant, Shawn Colburn. After due notice was issued a hearing was held by telephone conference call on April 30, 2007. The claimant participated on his own behalf. The employer participated by Branch Manager Brent Mintle, Manager Curtis Tice and was represented by TALX in the person of Edward O'Brien.

ISSUE:

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

FINDINGS OF FACT:

Shawn Colburn was employed by Jeld-Wen from May 16, 2005 until February 16, 2007, as a full-time field technician. In November 2006 the claimant informed Manager Curtis Tice he was going to be resigning, but that he was willing to train a replacement when the time came. On February 2, 2007, Branch Manager Brent Mintle talked to the claimant about some concerns with late work reports and complaints from customers about work not getting done. During that call Mr. Colburn confirmed he would be quitting and would give a firm resignation date as soon as he heard from the human resources department of the company who was going to hire him.

On February 16, 2007, the employer met with the claimant to discuss the same concerns expressed two weeks prior. The meeting was attended by the claimant, Mr. Tice and Mr. Mintle, and the employer had prepared two warnings, one a documented verbal and another a written warning. He was also told he was being suspended for three days pending a closer review of the late reports and customer complaints. Mr. Colburn became angry and said he would not accept the warnings or the suspension, and resigned effective immediately.

Shawn Colburn has received unemployment benefits since filing a claim with an effective date of March 11, 2007.

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(28) 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:

(28) The claimant left after being reprimanded.

The claimant had already notified the employer of his intention to quit, but he had never specified a date on which the resignation would be effective. Up until that time he was still expected to do his work as required and follow the company policies and procedures. When he was not doing this the employer intended to discipline him with documented warnings and a suspension. The claimant quit rather than accept the reprimands. 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 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 unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 6, 2007, reference 01, is reversed. Shawn Colburn is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,735.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs