

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L HALTERMAN
Claimant

APPEAL NO: 06A-UI-08787-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASTORIA INDUSTRIES OF IOWA INC
Employer

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

Iowa Code section 96.5(1) – Voluntary Quit
871 IAC 24.25(4) – Three Days No-Call No-Show
Iowa Code section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Astoria Industries of Iowa filed a timely appeal from the August 30, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 18, 2006. Claimant William Halterman participated and presented additional testimony through his friend, Julie Jones. Human Resources Manager Tiffany Wolf represented the employer. Employer's Exhibits One, Two, and Three, and Claimant's Exhibits A and B were received into evidence. The administrative law judge took official notice of Agency records regarding benefits disbursed to the claimant.

ISSUE:

Whether Mr. Halterman voluntarily quit the employment without good cause attributable to the employer. He did.

Whether Mr. Halterman was absent three days without notifying the employer in violation of the employer's policy. He was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Halterman was employed by Astoria Industries of Iowa as a full-time general laborer from April 10, 2006 until July 28, 2006, when Human Resources Manager Tiffany Wolf concluded Mr. Halterman had voluntarily quit because he had been absent three consecutive days without notifying the employer. Mr. Halterman's regular scheduled hours were 6:00 a.m. to 2:30 p.m., Monday through Friday. The employer's written general attendance policy required employees to directly contact Human Resources Manager Tiffany Wolf at least one hour before the scheduled start of a shift if they needed to be absent. The employer had modified the written policy to require employees on the first shift to notify Ms. Wolf no later than 6:30 a.m. if they needed to be absent for their 6:00 a.m. shift. Ms. Wolf made herself available to receive phone calls between 6:00 a.m. and 8:00 a.m. In the event Ms. Wolf was not available, employees

were to leave a voice mail message for Ms. Wolf. The employer's written policy deemed three consecutive days of absence without notifying the employer a voluntary quit. Mr. Halterman was aware of the attendance policy and the amendment that applied to the first shift employees and had signed his acknowledgment of both on April 10, 2006.

Prior to July 26, Mr. Halterman's absences were all for illness properly reported to the employer. These prior absences included absences on July 20-21. On July 20, Mr. Halterman had left a message for Ms. Wolf in which he indicated that he needed to be absent due to back pain. On Friday, July 21, Mr. Halterman called and spoke directly with Ms. Wolf about the fact that he had scheduled a doctor's appointment concerning his back. Mr. Halterman met with a doctor on July 21 and received a doctor's note that excused him from work, with a return date of July 31. Mr. Halterman did not provide this excuse to the employer and instead returned to work on Monday, July 24. Mr. Halterman then appeared for his shift on July 25.

During the period of July 26-28, Mr. Halterman was absent without notifying the employer. On July 28, the third day on which Mr. Halterman was absent without notifying the employer, Ms. Wolf deemed the absences a voluntary quit pursuant to the employer's written attendance policy.

On July 31, Mr. Halterman called Ms. Wolf to inquire about his final paycheck. During this brief phone call, Mr. Halterman made no mention of a doctor's appointment or of a doctor's excuse relating to the July 26-28 absence. Mr. Halterman lived with Zina Britt, who had a telephone and who had used that telephone to notify the employer of Mr. Halterman's prior absences. On August 4, Mr. Halterman met with Ms. Wolf for an exit interview and to collect his final check. At that time, Mr. Halterman asserted that he had a doctor's excuse that covered the July 26-28 absences. Ms. Wolf asked Mr. Halterman to provide the excuse. Mr. Halterman never provided the purported doctor excuse to the employer.

Mr. Halterman provided a doctor's excuse for the hearing that he asserted covered the July 26-28 absences. However, careful examination of the document reveals that the date of the exam has been altered by changing the 21 to a 26 in an attempt to make the date of the exam appear to have been July 26, rather than July 21, the date on which Mr. Halterman had actually gone to the doctor. The altered number is distinguishable from the two instances of the number 6 that appear close by in the same document. If one looks carefully, one can see where the altered portion is attached to the original number. If one looks carefully, one can see that the other two instances of the number 6 are written in a loose or open style and end with a line that points down and to the right, whereas the altered portion of the altered number 6 is written in a more controlled style that places the loop of the number immediately next to the beginning stroke of the number and ends with a line that points up.

Mr. Halterman established a claim for benefits that was effective August 6, 2006 and has received benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Halterman voluntarily quit the employment without good cause attributable to the employer by being absent three consecutive days without notifying the employer in violation of the employer's policy. It does.

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(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence in the record indicates that Mr. Halterman was indeed absent three consecutive days without notifying the employer in violation of the employer's written policy. In reaching this conclusion, the administrative law judge has concluded that the employer's testimony is more credible than the testimony provided by Mr. Halterman. Mr. Halterman provided testimony that was internally inconsistent, inconsistent with the written statement from Zina Britt that Mr. Halterman submitted as evidence, inconsistent with the weight of the evidence and inconsistent with reason and common sense. For example, Mr. Halterman testified that he did not have ready access to a telephone, but the statement from Ms. Britt clearly contradicts this assertion. The employer gave Mr. Halterman an opportunity to clear up the mystery of his absence on July 26-28, but Mr. Halterman failed to do so. Mr. Halterman's story regarding his doctor's note allegedly from July 26 and why he did not provide it to the employer is implausible. A much more plausible explanation, in light of the evidence, is that Mr. Halterman did not think to utilize the doctor's note until after the period of unexcused absence and did not want to provide the original of the note to the employer either because the alteration had not yet taken place or because the alteration was readily apparent on the original document.

Based on a preponderance of the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Halterman voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Halterman is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Halterman.

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.

Because Mr. Halterman has received benefits for which he has been deemed ineligible, the benefits he has received constitute an overpayment he must repay to Iowa Workforce Development. Mr. Halterman is overpaid \$952.00.

The administrative law judge is willing to reopen the record for the limited purpose of receiving into evidence the original of the doctor's excuse, if Mr. Halterman wishes to make that document available for review and consideration. The administrative law judge would need to receive the document within 15 days of the mailing date of the present decision.

DECISION:

The Agency representative's August 30, 2006, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$952.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs