

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRYCE C KINKADE**

Claimant

**PREMIER CASTING SERVICES**

Employer

**APPEAL NO: 12A-UI-00367-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/11**

**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(4) – Absent Without Notice  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 6, 2012, reference 05, that held it failed to establish misconduct when discharging claimant on October 27, 2011, and benefits are allowed. A telephone hearing was held on February 8, 2012. The claimant participated. Tami Fuller, Office Manager, participated for the employer. Employer Exhibits 1 – 12 was received as evidence.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time general laborer with welding/inspector duties from August 10, 2011 to October 24. The claimant knew it was employer policy to call-in or come-in to work each day. Claimant was a no-call/no-show to work for three days, October 25-27, and the employer terminated him as a voluntary quit.

Claimant suffered a respiratory illness but he admits he failed to call in absences from work on October 25 and 26. The employer has a number with shift supervisors ready to answer and log record calls from an employee who is reporting an absence. The employer log does not show any call by claimant on October 27, and the shift supervisors concur.

When claimant reported to work on October 28 he had a doctor's excuse for October 25 and 26, but the office manager advised he had voluntarily quit by failing to report or call in for three consecutive days.

Claimant has received unemployment benefits on his current claim.

## 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(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 administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to failing to provide notice of absences for three days in violation of a company rule effective October 27, 2011.

The claimant admits he failed to properly report his absences due to illness for consecutive days on October 25/26. Due to the nature of his illness and lack of hospitalization there is no excuse for this conduct. The employer offered documents and statements claimant failed to report an absence on the third day that constitutes a voluntary quit without good cause based on employer policy.

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.

Since claimant has been denied benefits by this decision after having received them, the overpayment issue is remanded to Claims for decision.

**DECISION:**

The department decision dated January 6, 2012, reference 05, is reversed. The claimant voluntarily quit without good cause on October 27, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded to Claims.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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