

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN H KOHLER**  
Claimant

**APPEAL NO: 11A-UI-13354-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEL DEN GARAGE DOORS INC**  
Employer

**OC: 09/11/11  
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(28) – Reprimand  
Section 96.3-7 –Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 4, 2011, reference 01, that held the claimant voluntarily quit with good cause attributable to the employer on August 23, 2011, and benefits are allowed. A telephone hearing was held on November 1, 2011. The claimant participated. Rick Vinson, President, Michael Roy, Assistant Manager, Jennifer Silliman, and Krystal Frizell, Sales Associates, participated for the employer.

**ISSUE:**

Whether the claimant voluntarily quit with 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 warehouseman from October 26, 2009 to August 22, 2011. The employer had some issues with claimant's behavior toward co-workers and customers. Co-workers complained claimant was hot tempered and would become agitated when responding to work orders. He was counseled about his behavior issues.

Claimant called in to report an absence from work the latter part of the week of August 14 – 19. The employer knew he also had a scheduled day off that week, so he was told to take some time off and come in the following Tuesday, August 23. The employer perceived the time off might help with claimant's behavior issues.

When claimant reported on Tuesday, he was called into President Vinson's office and counseled about his behavior and attitude issues. He was then sent out to the warehouse to work. A sales associate brought claimant a customer ticket order that he questioned. Vinson heard the exchange and the associate spoke to him about what happened before he confronted claimant. Vinson yelled at claimant "do you want your job", and pulled him into his office. After

an exchange of words, claimant stated "I can't handle this anymore, I'm leaving". Claimant was told if he left it meant he was quitting.

Claimant has received unemployment benefits on his current claim.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer on August 23, 2011.

The claimant had been given a week off from work in order to cool off leading up to the employer meeting when he returned to work. He was verbally reprimanded about his behavior before being sent to the warehouse about his poor attitude in dealing with customers and co-workers.

A short time later, the employer is confronted with claimant displaying argumentative behavior toward a co-worker in questioning a customer order. It is understandable the employer who had just reprimanded claimant responded with frustration by yelling at claimant but this conduct does not constitute an intolerable or detrimental working conduction that rises to the level as a good cause for quitting.

Iowa Code § 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 disqualified by reason of this decision, the overpayment issue is remanded to claims for decision.

**DECISION:**

The department decision dated October 4, 2011, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on August 23, 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.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs