

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID C HUBER
Claimant

APPEAL NO. 09A-UI-08689-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAPETTI'S OF IOWA
Employer

OC: 05/03/09
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Papetti's, filed an appeal from a decision dated June 3, 2009, reference 01. The decision allowed benefits to the claimant, David Huber. After due notice was issued a hearing was held by telephone conference call on July 2, 2009. The claimant participated on his own behalf. The employer participated by Safety Supervisor Auby Ninemire, Production Manager Mark Ensign, and was represented by TALX in the person of Jennifer Cole.

ISSUE:

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

FINDINGS OF FACT:

David Huber was employed by Papetti's from August 22, 2001 until April 22, 2009 as a full-time machine operator. He worked in the "box room" with another employee. The room contained several machines. The box machines can be run by one person but the spiral, or ice, machine required two people to be present for safety reasons whenever it had to be cleaned. This had to be done approximately every two hours and took a few minutes.

On April 22, 2009, the lead person from the adjacent oven room came and took Mr. Huber's co-worker to help out in the other area. This had occurred several times in the past and the claimant felt it was not safe for him to be in the box room. But this was only a concern if he had to work on the spiral machine which required the buddy system. He had the authority to go to his own supervisor or the oven room supervisor and request immediate help for safety reasons.

At no time did the claimant go to his own supervisor, the safety supervisor, production manager, or human resources to complain about the situation. He did not report the situation to OSHA, but decided to quit on April 22, 2009, shortly after this co-worker had been temporarily reassigned to the oven room.

David Huber has received unemployment benefits since filing a claim with an effective date of May 3, 2009.

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.

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The claimant quit because he felt the work conditions were unsafe. The record does not support this contention. He required a helper only when he needed to work on the spiral machine but that was work of only a few minutes every two hours. At no time was he told he could not have help when needed. He made no attempt to inquire of any lead worker, supervisor or manager about what he should do. It appears he made the assumption he was required to violate the safety rules and work on the spiral machine by himself. This is not the case. Any time he needed help he had only to ask for it, which he failed to do.

The claimant quit because of an erroneous assumption on his part he was being required to work outside of the "buddy system." His mistaken assumption does not constitute good cause attributable to the employer 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 June 3, 2009, reference 01, is reversed. David Huber is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs