

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFF P SHERRILL**  
Claimant

**APPEAL NO. 12A-UI-00271-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 12/04/11**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated December 30, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 6, 2012. The claimant participated. The employer participated by Nicole Rice, branch manager, and Sarah Fiedler, claims administrator. The record consists of the testimony of Jeff Sherill; the testimony of Nicole Rice; the testimony of Sarah Fiedler; and Employer's Exhibit 1.

**ISSUES:**

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. In June 2010, the employer was hired by Winegard to provide staffing services for its plant. The claimant had worked for the previous staffing agency and continued to work for the employer. He initially worked the day shift, which runs from 6:00 a.m. to 2:00 p.m. The night shift goes from 2:30 p.m. to 10:30 p.m. In November of 2010, the claimant went to the night shift.

The claimant made a complaint about a Winegard employee. His complaint was that this employee was harassing him. An investigation was done by Winegard and the employer. The complaint made by the claimant was unfounded. The claimant said he was still uncomfortable working with this Winegard employee. The employer then offered the claimant a job on first shift in a different department. This offer was made in May 2011. The claimant was free to accept or decline the offer. He accepted the offer and worked until July 26, 2011.

On July 26, 2011, the claimant left the line at lunchtime. He turned in his badge at the employer's desk and left. Work was available had the claimant elected to keep working.

**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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of employment. The claimant left the production line at lunch and turned in his badge. He did not give his employer any notice. He simply left the premises and never returned. The claimant's actions show his intent to sever the employment relationship.

There is insufficient evidence in this record to show that the claimant quit for good cause attributable to the employer. The claimant testified that he did not want to work first shift because it interfered with his life. When pressed on what he meant by that, the claimant stated that he needed to help his sister during the day. This testimony is not credible. First, the claimant accepted a job on first shift in May 2011, and continued to work that shift until July 26, 2011. If he truly had to help his sister during the day, his acceptance of a job offer on first shift makes no sense. Second, he never told the employer about his personal situation. He never approached his employer about going back to second shift. He simply quit without explanation.

The real reason the claimant may have quit is that he felt he was being harassed by another employee. This harassment complaint, which was made prior to the move to first shift in May 2011, was unfounded based on the investigation done by both the employer and Winegard. The claimant testified that nothing was done about this employee because he was friends with the supervisor. He offered no evidence to corroborate his claim that he was being harassed.

The administrative law judge concludes that there is insufficient evidence in this record to find that the claimant voluntarily quit with good cause attributable to the employer. There was no change in the contract of hire. Even if the move to first shift was a change in the contract of hire, the claimant acquiesced in that change by working at least two months on first shift. The claimant's complaints about another employee were not corroborated by any other evidence. The employer testified that the claim was investigated and was unfounded. The claimant decided to quit and he did so without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The representative's decision dated December 30, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw