

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KACIE D BOYD
Claimant

APPEAL NO. 13A-UI-07685-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAM INC
Employer

OC: 06/09/13
Claimant: Respondent (2R)

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 June 26, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was held on August 2, 2013. The claimant participated personally. The employer participated by Perry Tague, president; and Keith Gordon, manager. The record consists of the testimony of Perry Tague; the testimony of Keith Gordon; and the testimony of Kacie Boyd.

ISSUES:

Whether the claimant voluntarily quit 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 pest control company. The claimant was hired on January 3, 2012, as a full-time route technician. His last day of work was May 13, 2013. He voluntarily quit his job on May 13, 2013. He did not show up for work on May 14, 2013, and May 15, 2013. On May 15, 2013, the employer picked up his truck and supplies and invoices. The employer did not terminate the claimant. Work was available had the claimant elected to come to work.

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 claimant is not eligible for unemployment insurance benefits. The findings of fact show how the credibility issues were resolved in this case. The administrative law judge accepts the testimony of Perry Tague and Keith Gordon that the claimant resigned his position to take another job. Of particular importance is the fact that the claimant did not show up for work on May 14, 2013 and May 15, 2013. The claimant still had a company vehicle. He could have driven to the employer's place of business. He did not call the employer to find out why his access to the company records was blocked. His actions on May 14, 2013, and May 15, 2013, are entirely consistent with someone who has quit his job. Since the claimant voluntarily quit his job 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 decision of the representative dated June 26, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs