

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES R EKSTRAND**  
Claimant

**APPEAL NO: 08A-UI-03902-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASG CONSTRUCTION INC**  
Employer

**OC: 04/09/08 R: 02  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

ASG appealed a representative's April 9, 2008 decision (reference 03) that concluded James R. Ekstrand (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2008. The claimant participated in the hearing. Scott Wittstruck, the office manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 12, 2006. The employer hired the claimant as a carpenter in the framing department. The claimant initially worked in the Cedar Rapids area. When the claimant worked on a Des Moines project, the employer initially paid for his lodging, mileage, and per diem. The claimant became the assistant project manager at the Des Moines location.

When the claimant moved into his girlfriend's home in Des Moines for personal reasons, he only asked the employer for \$100.00 a week for rent. When the Des Moines project had been completed, Wittstruck talked to the claimant about working again in the Cedar Rapids area. The employer understood the claimant wanted to live in Des Moines and agreed to pay him mileage and the time it took him to drive to a job site outside of the Des Moines area. In mid-August 2007, Wittstruck understood the claimant planned to commute to jobs the employer had in the Cedar Rapids and Iowa City area. On August 27, 2007, the project manager told the employer

the claimant quit because he had accepted another job. While the claimant decided he would not commute to jobs outside the Des Moines area, he did not have another job. The claimant understood from the project manager that the employer would have work for him in the Des Moines area in four to six weeks.

When the claimant's former project manager accepted another job, the employer asked the claimant to take over a project in Pleasant Hills. The claimant began working again for the employer again on January 10, 2008. The claimant's job ended on January 31, 2008, when financing for the work site did not materialize. The claimant earned \$3,215.00 in wages in January 2008.

The claimant established a claim for benefits during the week of February 24, 2008. He filed claims for the weeks ending March 8 through May 3, 2008. He received his maximum weekly benefit amount of \$373.00 for each of these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. In this case there are two employment separations, August 27, 2007 and January 31, 2008. On August 27, 2007, the claimant initiated his employment separation when he decided he would not commute to work sites in the Cedar Rapids and Iowa City area. Even though the Des Moines' project had been completed, the employer had work for the claimant to do outside of Des Moines. The claimant quit on August 27, 2007. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits without good cause when he leaves employment because of the commuting distance to the job; but the claimant knew about the distance when hired. 871 IAC 24.25(30). When the employer hired the claimant, the claimant worked in the Cedar Rapids area. After the employer assigned the claimant to work in the Des Moines area, the claimant decided to move to Des Moines. This was the claimant's choice and was not prompted by the employer. Even though the employer had continuing work for the claimant to do in the Cedar Rapids/Iowa City area and the employer planned to compensate the claimant for commuting, the claimant decided he would not continue working for the employer because he did not want to commute. The claimant has the right to live where he wants to, but the nature of the construction business requires employees to travel to the job site. The employer did not ask the claimant to relocate to Des Moines; he did that for compelling personal reasons. The facts establish the claimant on August 27, 2007 for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

When the claimant again worked for the employer in January 2008, he did not earn enough in wages to requalify. As a result, the disqualification imposed because he quit without good cause on August 27, 2008, remained in effect. Therefore, as of February 24, the claimant is not qualified to receive benefits.

The employment separation that occurred on January 31, 2008, does not disqualify the claimant from receiving benefits. This separation occurred through no fault of the claimant when financing for the project could not be obtained or maintained. Since the claimant did not earn

ten times his weekly benefits since August 27, 2007, he is not qualified to receive benefits as of February 24, 2008.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 8 through May 3, 2008. The claimant has been overpaid \$3,357.00 in benefits he received for these weeks.

**DECISION:**

The representative's April 9, 2008 decision (reference 03) is reversed. The employer did not discharge the claimant on August 27, 2007. Instead, the claimant voluntarily quit working for the employer for personal reasons that do not qualify him to receive benefits. The claimant's subsequent employment in January 2008 ended for reasons that do not disqualify him from receiving benefits. Since the claimant did not earn ten times his weekly benefits between August 27, 2007 and February 24, 2008, he is not qualified to receive benefits as of February 24, 2008. The employer's account will not be charged based on wage credits the claimant earned up through August 27, 2007. The claimant has been overpaid and must repay a total of \$3,357.00 in benefits he received for the weeks ending March 8 through May 3, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw