

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES RICKERT**  
Claimant

**APPEAL NO. 09A-UI-00295-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GUARDSMARK LLC**  
Employer

**OC: 12-07-08 R: 01**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 6, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on February 5, 2009. The claimant participated in the hearing. Steve Armstrong, Manager, and Wendy Skarin, Site Supervisor, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time security officer for Guardsmark from April 26, 2008 to November 26, 2008. Around November 19, 2008, the claimant had a confrontation with a contract food employee at the plant and the food service employee reported the claimant used profanity. The situation was reported to the plant manager, who reported it to the claimant's site supervisor, Wendy Skarin. On November 24, 2008, Ms. Skarin suspended the claimant pending investigation of the incident. She talked to the claimant about what happened, but he denied everything, while the food service worker again stated they had a confrontation and he used profanity. Ms. Skarin determined that both parties were sticking to their recitation of the facts, so the plant human resources manager wanted to meet with both. The claimant was notified of that development and was then told the date and time of the meeting. On November 26, 2008, the claimant came in during the overnight shift and returned all of his uniforms and told a co-worker his employment was terminated. The meeting had not yet taken place and the only two people with the authority to fire an employee had not terminated the claimant's employment. The claimant testified that he was fired because the employer wanted to "get rid of him" although he had retired from the employer January 8, 2008, and the employer rehired him April 26, 2008.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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 from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the employer was investigating the incident between the claimant and the food service worker, it never told him his employment was terminated or even that it was considering dismissing him from his job. The claimant chose to bring in his uniforms rather than attend the meeting with the plant human resources manager. His actions demonstrate an intent to quit his job. There is no evidence that the employer wanted to get rid of him as he maintains. Under these circumstances, the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The January 6, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed