

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLOS CALDERON**  
Claimant

**APPEAL NO. 10A-UI-13720-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF BETTENDORF**  
Employer

**OC: 09/05/10**  
**Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

The City of Bettendorf (claimant) appealed an unemployment insurance decision dated October 4, 2010, reference 01, which held that Carlos Calderon (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2010. The claimant participated in the hearing. The employer participated through Kathleen Richlen, Human Resources Director. Employer's Exhibits One and Two and Claimant's Exhibit A were admitted into evidence. 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.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time sanitation worker from May 22, 2006 through August 20 2010. The employer received a citizen complaint about the claimant speeding in a residential area in late April 2010 or early May 2010. Any time the employer receives a complaint about an employee, the matter is investigated. If an employee has had several complaints, the employee is placed on paid leave while the matter is investigated. The claimant was placed on administrative leave on May 14, 2010, pending further investigation.

The employer scheduled a meeting with the claimant after he was placed on leave. The claimant attended the meeting with Attorney Mike Meloy. Mr. Meloy subsequently presented the employer with a settlement agreement and the employer agreed. City Attorney Gregory Jager sent Mr. Meloy a letter dated May 26, 2010 outlining the settlement. The voluntary agreement provided that the claimant would remain on paid leave until August 20, 2010. The

claimant was going to submit a written letter of resignation and was allowed to continue on the health plan but did not accrue further vacation after May 10, 2010. The employer agreed to make no further inquiry into the disciplinary matter and agreed not to provide an adverse recommendation if called by a subsequent employer. The claimant submitted his written resignation dated June 10, 2010, which stated he was resigning his job to pursue other employment opportunities.

The claimant filed a claim for unemployment insurance benefits effective September 5, 2010 and has received benefits after the separation from employment.

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

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by submitting a written resignation dated June 10, 2010 with an effective date of August 20, 2010. He contends he was fired or that he quit because he was going to be fired, but the facts do not support that contention. The employer had not finished its disciplinary investigation, so the results of that investigation could not be known.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated October 4, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw