

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN R JONES**  
Claimant

**APPEAL NO. 08A-UI-07011-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LEADING EDGE PORK LLC**  
Employer

**OC: 06/22/08 R: 03**  
**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 decision of a representative dated July 22, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 18, 2008. The claimant participated. The employer participated by Karen Robinson, Office Manager; Brian Sherman, Production Manager; and Wayne Peugh, Co-Owner.

**ISSUE:**

At issue in this matter is whether the claimant quit employment for a 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 and considered all of the evidence in the record, finds: The claimant worked for this employer from February 26, 2007 until April 30, 2008 as a full-time herdsman. Mr. Jones was paid by salary. His immediate supervisor was Brian Sherman.

Mr. Jones left his employment with Leading Edge Pork LLC on April 30, 2008 in anticipation that he would be laid off by the company. The company had suffered a fire in its facility where Mr. Jones had been employed and substantial cleanup operations had been completed. Other workers had been transferred to the employer's facility in the state of Illinois. Mr. Jones was somewhat unsure of his status as he had been performing cleanup duties for the landowner, although he was continued to be paid by Leading Edge Pork LLC.

On April 30, 2008, the claimant telephoned the company's office manager, Karen Robinson, and at that time indicated that he had "found another position." Based upon the claimant's statements to the office manager the employer reasonably concluded that the claimant had chosen to leave his employment. Work continued to be available to Mr. Jones at the time that he chose to leave.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Jones left work for reasons that were attributable to the employer. It does not. The evidence in the record establishes that work continued to be available to Mr. Jones at the time that he chose to leave employment. The claimant had been assigned to work in ongoing cleanup operations at the company's facility that had been destroyed by fire. At the time the claimant left employment the cleanup operations had not been completed and the claimant had not been specifically informed by his employer that work had come to an end. The evidence in the record establishes that Mr. Jones anticipated that the work was ending because other workers had been reassigned and the landowner, who was not directly affiliated with Leading Edge Pork, had been speaking to the claimant about continuing work at the location. At that time work continued to be available to Mr. Jones with Leading Edge Pork and he continued to be paid by the company. Mr. Jones testified that he left employment when he "figured I was laid off."

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.

The evidence in the record establishes that Mr. Jones anticipated that his work was ending with Leading Edge Pork although he had not been specifically told by the employer that he was being laid off or that his employment had ended. The claimant's employment came to an end when he contacted the company's office manager on April 30, 2008 by telephone indicating that he had "found another job", leading the employer to the reasonable conclusion that the claimant was relinquishing his position with the company. Work continued to be available to Mr. Jones at the time of leaving at the work location where he had been employed.

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 states pursuant to section 602.10101.

**DECISION:**

The representative's decision dated July 22, 2008, reference 01, is hereby reversed. Claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing he is otherwise eligible. The potential overpayment is remanded to Iowa Workforce Development Claims Division for determination of whether there has been any overpayment and whether the claimant will have to repay the benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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