

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W WILDT
Claimant

APPEAL NO. 11A-UI-12130-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PREMIER FABRICATION
& POWDER COATING INC**
Employer

**OC:08/14/11
Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 7, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 10, 2011. The claimant participated. Rebecca Olson was a witness for the claimant. The employer participated by Joe McBirnie, president. Jeff Craun was a witness for the employer. The record consists of the testimony of Joe McBirnie; the testimony of Jeff Craun; the testimony of David Wildt; and the testimony of Rebecca Olson.

ISSUES:

Whether the claimant was separated from his employment for any disqualifying reason; 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 does custom sand blasting and restoration of older pieces of equipment. The claimant was hired as a full-time laborer in November 2008. The claimant's last day of work was May 13, 2011.

On May 14, 2011, the claimant called Joe McBirnie and asked him for a ride to a graduation party that both of them were attending. The claimant and his girlfriend do not have driver's licenses. Friends drive them. Mr. McBirnie picked up the claimant and his girlfriend. They stopped so that the claimant could buy a graduation card.

The claimant was drinking beer at the party. Mr. McBirnie and Jeff Craun were talking together. Mr. Craun is a friend and does business with Mr. McBirnie. The claimant asked why Mr. McBirnie would have taken Mr. Craun to a golf tournament. Mr. McBirnie told the claimant that Mr. Craun was a client and helped pay the claimant's paycheck. The claimant got angry. He said: "I quit. I'm done with you."

The claimant did not come to work on Monday, May 16, 2011. He did not contact his employer. Work was available had the claimant come to work. The employer needed someone to do the claimant's job. He hired a new person on Friday, May 20, 2011.

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 credible evidence in this case showed that it was the claimant who initiated the separation of employment. The claimant got mad at the employer while at a graduation party. The claimant was drinking beer. He testified that he was not drunk. The claimant told his employer that he quit and that he was "done with you." Exactly why the claimant was mad is not certain. The claimant may have been mad because of a golf tournament or the pay of another employee. The claimant said words that clearly showed he intended to quit his job.

The claimant's intent to quit his job is further shown by his failure to come to work the following week. Although the claimant and his girlfriend testified that he called the employer and another employee for a ride, this testimony is not credible. Mr. McBirnie testified that he does not miss messages. He has to be able to take phone calls; it is vital to his business. The claimant thought he was being "blown off." If that were true, Mr. McBirnie would have immediately replaced the claimant instead of waiting an entire week.

The claimant elected to quit his job. He first announced his intention at a graduation party and then failed to come to work or contact his employer the following week. He abandoned his job. There is no good cause attributable to the employer for the claimant's quit. 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 representative's decision dated September 7, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the 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/kjw