

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL R THURMAN**  
Claimant

**APPEAL NO. 10A-UI-11188-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMANA FARMS INC**  
Employer

**OC: 11/29/09**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Amana Farms, Inc. filed a timely appeal from a representative's decision dated August 4, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits finding the claimant voluntarily quit work due to detrimental working conditions. After due notice, a telephone hearing was held on September 23, 2010. Mr. Thurman participated personally. The employer participated by Caroline Ertz, Human Resource Manager; Scottie Clubb, Feed Lot Manager and John McGraff, Farm Manager.

**ISSUE:**

The issue is whether the claimant quit employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Daniel Thurman was employed by Amana Farms, Inc. as a farm laborer from April 2010 until June 18, 2010 when the employer concluded he had quit employment by failing to report or provide notification for three or more consecutive work days. Mr. Thurman was employed on a full-time basis and was paid by the hour. His immediate supervisor was Scottie Clubb.

Mr. Thurman last performed services for Amana Farms, Inc. on Sunday, June 13, 2010. The claimant discontinued reporting to work after that date and provided no notice to the employer that he was quitting employment or for the reasons that he was failing to report for work. After the claimant had failed to report for scheduled work for three or more consecutive work days, the employer reasonably concluded that Mr. Thurman had quit employment.

Approximately two weeks to a month before Mr. Thurman's last work day, the claimant had spoken with Mr. Clubb, his supervisor, about some conditions on the farm that Mr. Thurman felt were unsafe. Mr. Thurman had noted that there was not a ladder in place extending to the bottom of a manure pit in the facility and also expressed concern that a water hydrant in the work area did not have a back flow protector installed on it. Mr. Clubb explained that the

manure pit was completely covered by a metal grate and posed no danger to employees working in the area. Mr. Clubb also pointed out there was an extension ladder located within 50 feet of the pit to be used if employees found it necessary to enter the pit. Mr. Clubb further explained that if a hose used in the area was disconnected after use, there would be no danger of back flow into the water system that could contaminate it. Company electrical panels are designed in a manner so that power to the panels is cut off when the panels are opened to prevent sparking or electrical shocks.

Mr. Thurman did not bring any additional concerns to the attention of Mr. Clubb or any other management individuals or the company's Human Resource Department before discontinuing to report for work after June 13, 2010.

It is the claimant's position that he left employment because of safety concerns that were not being addressed.

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

For the reasons that follow the administrative law judge concludes the claimant voluntarily left 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if the conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer under the provisions of 871 IAC 24.26(4). The test as to whether an individual has good cause attributable to an employer for leaving employment is not a subjective test as to whether the employee themselves feel they have good cause but an objective test as

to whether a reasonable person would have quit under similar circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988). See also O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993).

The evidence in this case establishes that Mr. Thurman had brought to the attention of the feed lot manager some concerns about safety in the work place. The evidence establishes that Mr. Clubb had responded explaining that a manure pit was fully covered with a metal grate and that a ladder was near by. Mr. Clubb explained that the potential for back flow in to the water system should not be an issue if employees followed procedure removing a hose from the hydrant after use. Although Mr. Thurman may have been dissatisfied with the responses of his supervisor, the claimant did not complain further or indicate in any matter that he would be quitting employment if specific changes were not implemented by Amana Farms. The claimant was aware of the work area and the job requirements as he was given a tour of the facility before accepting employment. When Mr. Thurman made no further complaint, the employer was reasonable in its perception that the matter had been resolved.

Inasmuch as the claimant did not give the employer a final opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

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.

**DECISION:**

The representative's decision dated August 4, 2010, reference 01, is reversed. Claimant left employment without good cause 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 his weekly benefit amount, and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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