

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODY J SUNDVOLD**  
Claimant

**APPEAL NO: 08A-UI-09505-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUISENGA CONSTRUCTION CO**  
Employer

**OC: 07/27/08 R: 03**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Huisenga Construction Company (employer) appealed a representative's October 13, 2008 decision (reference 01) that concluded Jody J. Sundvold (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2008. The claimant received the hearing notice and responded by calling the Appeals Section on October 27, 2008. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. He called the Appeals Section again on October 30, 2008 to provide a name of a witness and a telephone number for that witness to participate in the hearing; he also requested that a copy of the materials from the Claims Section's fact-finding interview be distributed to the parties for use in the hearing. However, when at the scheduled time for the hearing the administrative law judge called the telephone numbers provided by the claimant for him and his witness, neither of them was available; therefore, the claimant did not participate in the hearing. Dennis Huisenga appeared on the employer's behalf and presented testimony from one other witness, Michael Johnson. On the possibility that the claimant had intended on having the materials from the fact-finding interview used in lieu of his participation in the appeal hearing, those materials were admitted into the record during the hearing as Exhibit A-1. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on or about July 8, 2007. He worked full time as a carpenter and foreman in the employer's home remodeling business. His last day of work was July 17, 2008.

The claimant was scheduled to report to work at 7:00 a.m. on July 19. When he had not reported for work, Mr. Huisenga, the owner, attempted unsuccessfully to reach the claimant. The claimant had been allowed for a period to drive the employer's work truck home, but the employer needed the truck on July 19 for some work that needed to be done; also, the claimant had recently revealed to Mr. Huisenga that he did not possess a valid driver's license. As a result, Mr. Huisenga was not going to allow the claimant to continue to drive the truck due to liability issues.

When the claimant did not report for work and did not respond to the employer's call, Mr. Huisenga and Mr. Johnson went out to the claimant's residence at approximately 7:30 a.m. The claimant did not appear to be about the premises. They found the employer's truck, which was stuck in some mud in the claimant's yard. They freed it and left with it by approximately 8:00 a.m. The claimant did not further communicate with the employer that day, but he did pick up his paycheck from the box over the weekend or on Monday, July 21. He then did speak with Mr. Huisenga later that week and had agreed to return to work, but on the date set he did not return. He picked up his final paycheck from the employer's box over the weekend of July 26.

The claimant asserted to the Claims representative that he had quit his employment in part because of a problem in getting his paychecks. The employer's pay periods ran from Sunday through Saturday, and the pay check for the period would be cut and issued on the following Friday. If the employee worked on that Friday, he could get his check directly; if he did not, the employer left the paycheck in a box outside of its office. The claimant's pay checks were always available to him as of the Friday after the end of the pay period; there were times the claimant was not available to pick them up until some days thereafter.

The claimant had also asserted to the Claims representative that his wages had been deducted or reduced for things he had not agreed to. While the employer did on occasion make a deduction, such as for personal tools the claimant had purchased but had charged to the employer's account, the claimant had authorized the employer to deduct those items from his pay check. There was an issue regarding some additional work performed by the claimant at a rate less than his regular rate of \$16.00 per hour. However, while there had been a week where the claimant did some additional work to make some repairs at a rate of \$8.00, the employer had not required him to do this work, and the claimant had indicated to the employer he wanted to do the work and would agree to whatever the employer wished to pay him. As it was extra work outside the work the employer normally expected of the claimant, the employer agreed to pay him \$8.00 for that work.

The claimant also asserted that he was not paid time and a half for overtime work in the past. The employer only allows overtime work with specific authorization. The employer does not have a provision for paying time and half. Time and a half is not a requirement applicable to all employees, and the claimant has not established that it applied to the employer.

The claimant established a claim for unemployment insurance benefits effective July 27, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$4,797.00.

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

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's October 13, 2008 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 27, 2008, benefits are withheld until such time as the claimant 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 is remanded to the Claims Section for investigation and determination of the overpayment issue.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw