

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIRK T MORRIS**

Claimant

**APPEAL NO. 06A-UI-11176-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASTORIA INDUSTRIES OF IOWA INC**

Employer

**OC: 10/22/06 R: 03  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Astoria Industries of Iowa, Inc. (employer) appealed a representative's November 15, 2006 decision (reference 01) that concluded Kirk T. Morris (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 December 6, 2006. The claimant participated in the hearing. Tiffany Wolf appeared on the employer's behalf and presented testimony from three other witnesses, Scott Metzger, George Parlier, and Bob Wolf. During the hearing, Claimant's Exhibits A through C were entered 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:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on December 12, 2005. He worked full-time as an inside sales representative in the employer's utility body manufacturing business. His last day of work was September 27, 2006.

During the morning on September 27, Mr. Wolf, the business' CEO, came into the room in which Mr. Metzger, the sales manager, Mr. Parlier, the production manager, and the claimant were; the claimant and Mr. Metzger at their desks, and Mr. Parlier sitting to discuss some production questions. Mr. Wolf was quit upset with the sales department as a large client had just been lost due to lack of follow through. His ten-minute discussion was focused on Mr. Metzger, indicating that he needed to get himself freed up from regular sales workload to perform his managerial duties; this at least implied that the claimant should become more productive in his duties and require less oversight by Mr. Metzger, a concern Mr. Metzger had previously discussed with the claimant. During Mr. Wolf's talk with Mr. Metzger, a reference was made to some pricing software that should be making easier for others to do what

Mr. Metzger had been doing; Mr. Wolf commented that the software was simple enough that “an orangutan could do it.” Mr. Parlier then left the room, followed shortly by Mr. Wolf.

The claimant finished working that morning and went home for lunch. He called Mr. Metzger from home, detectibly upset, and asked if he could take off the afternoon. Mr. Metzger denied the request, saying he needed the claimant for some work that afternoon. The claimant did return and worked the afternoon. There was no discussion about Mr. Wolf’s comments or how they related to the claimant.

The claimant was absent on September 28 and September 29; he brought in a doctor’s excuse dated September 28 indicating he should be excused those two days “due to medical problem.” He was again absent on October 2 and on October 3 and called to report he was going back to the doctor. He provided a doctor’s excuse dated October 3 indicating he should be excused through October 6 “due to medical problem.”

On October 9, the claimant was a no-call/no-show for work. Ms. Wolf, the human resources manager, attempted to call him but only reached an answering machine. The claimant was again a no-call/no-show on October 10, and Ms. Wolf again attempted to call him but only reached an answering machine. She left a message indicating that she needed to hear from him or he risked being considered a voluntary quit under the employer’s three-day no-call/n-show policy. The claimant did receive the message and was aware of the policy.

On October 11, the claimant was again a no-call/no-show; Ms. Wolf called and left a message for him that he needed to bring in his work equipment. Later that day the claimant did bring in his equipment and signed an exit form but did not specify the reason for leaving. In fact, the claimant had decided that he would not or could not return to work as he was sufficiently disturbed by the statements made by Mr. Wolf on September 27. When he visited the doctor on September 28, noted that he was “upset, distraught, anxious, depressed stemming from some job related problems. . . .” and that this was reportedly because “his boss demeans him and the other employees at his place of employment on a routine basis and seems to be getting the best of him.” The doctor prescribed medication, but did not tell him that he should quit his employment.

The claimant asserted that during Mr. Wolf’s statements, he had turned to look at the claimant at the point he was making the comment about the orangutan, and that the comment actually had been that he could “get a f - - - ing orangutan to do your job.” He further asserted that as Mr. Wolf was leaving the room, he turned and “flipped the bird” at the claimant and Mr. Metzger, saying “f - - - you guys.” Mr. Wolf denied these claims, and the two other employees present, Mr. Metzger and Mr. Parlier, also persuasively contradicted the claimant’s assertions.

The claimant agreed that there had not been any prior occasion that Mr. Wolf had spoken negatively toward him. While Mr. Wolf had spoke harshly to managers in the past and the claimant had commented to Mr. Metzger that he did not know what he would do if Mr. Wolf talked to him like that, he did not discuss with Mr. Metzger or anyone else his perception that the asserted September 27 comments had been directed toward him.

The claimant established a claim for unemployment insurance benefits effective October 22, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,614.00.

## 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 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.

Iowa Code § 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). 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. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28).

At least in part the claimant quit because of a claimed affect on his health. However, he has not submitted competent evidence showing adequate health reasons to justify his quitting. Further, before quitting he did not inform the employer of the work-related problem and inform the employer that he intended to quit unless the problem was corrected or reasonably accommodated.

While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### **DECISION:**

The representative's November 15, 2006 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 11, 2006, 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 claimant is overpaid benefits in the amount of \$1,614.00.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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