

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID B BARNES**

Claimant

**APPEAL NO. 11A-UI-11915-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAMS RIVERSIDE AUTO PARTS INC**

Employer

**OC: 08/07/11**

**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated August 30, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 5, 2011. Claimant was not available at the telephone number provided. Two messages were left. Claimant did not contact the Appeals Section until after the hearing was completed. Employer participated by Mr. Scott Frank, General Manager, and Mr. Jerry Hoffman, Dismantling and Shipping Supervisor.

**ISSUE:**

The issue is whether the claimant left 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: David Barnes was employed by Sam's Riverside Auto Parts, Inc. from February 28, 2007 until July 29, 2011 when he voluntarily left employment. Mr. Barnes held the position of full-time automobile dismantler and was paid by the hour plus incentives. His immediate supervisor was Jerry Hoffman.

Mr. Barnes left his employment with this employer on July 29, 2011 after missing approximately two days due to hospitalization. Upon his return, Mr. Barnes indicated his desire to quit employment. The claimant provided no medical documentation indicating that he was required to leave for medical records.

Prior to leaving employment, Mr. Barnes had on a number of occasions made inquiries about obtaining other job positions at Sam's Riverside Auto Parts, Inc. The claimant had been offered the position of a shipping department worker but declined the position because shipping department employees did not receive incentives in addition to their hourly pay. The claimant had also requested to be placed in the position of tow truck driver and had obtained a driver's license. Mr. Barnes was informed that no positions as tow truck drivers were available as the

company contracts all of its towing work and was further informed that the company insurance carriers require an employee to have a driver's license for three years to be insurable. Work continued to be available to Mr. Barnes at the time that he chose to leave employment.

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

For the reasons that follow the administrative law judge concludes the claimant voluntarily left his employment without 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

The evidence in the record does not establish that the work conditions were intolerable or detrimental but it does establish that Mr. Barnes had desired to be placed in a different job position with the company in the past but had declined the employer's offer to place him in a different job position. Mr. Barnes was also dissatisfied because a tow truck driver's job was not available after the claimant had obtained his driver's license. The employer reasonably explained to the claimant that the company at that time was contracting out its towing needs and further explained that the company's insurance carrier required employees to have a license for three years before they would be insured. Mr. Barnes left his employment on July 29, 2011 after being released from hospitalized for approximately two days. Claimant presented no medical documentation to the employer indicating that he was required to leave employment for medical reasons. Work continued to be available to the claimant at his normal job position and pay at the time that he chose to leave. An individual who voluntarily leaves their employment must first give notice to the employer of their 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).

Based upon the evidence at the hearing the administrative law judge concludes the claimant has not sustained his burden of proof in establishing that he left employment with good cause attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code § 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 30, 2011, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Claimant is disqualified from receiving unemployment insurance benefits until he 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.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs