

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID S WILLIAMS
Claimant

APPEAL NO: 06A-UI-08444-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER BARGE LINE INC
Employer

**OC: 07/23/06 R: 12
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Alter Barge Line, Inc. (employer) appealed a representative's August 17, 2006 decision (reference 01) that concluded David S. Williams (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 September 7, 2006. The claimant received the hearing notice and responded by calling the Appeals Section on September 5, 2006. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Randy Kirschbaum appeared on the employer's behalf and presented testimony from two other witnesses, Michelle Wittman and Mary Jekel. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 23, 2005. He worked full-time as a deck hand in the employer's Mississippi River barge towing business. His normal work schedule was to be on board 30 days then off 30 days. His last day of work was April 13, 2006.

In 2006, the claimant was on board from January 5 through January 26; at that time he requested to leave the boat early due to a court date, which was permitted. He went back on board on February 28 and worked through March 15, at which time he again asked to leave the boat early because the rest of the crew was making a change-over at that time, which request

was also granted. He went back on board on March 27 and worked through April 13. On April 13 he contacted first Ms. Wittman, the crew dispatcher, and then Mr. Kirschbaum, the marine manager, and requested to be allowed off early as he was ill with a bad cough. Mr. Kirschbaum consented and told the claimant to go to the doctor. He further informed the claimant he needed to supply the employer with a note from the doctor as soon as possible.

The employer made some subsequent phone contacts with the claimant as to his medical condition, but did not receive any medical documentation until May 8. On that date there were two doctor's notes faxed to the employer, one dated May 5 indicating that the claimant had been seen on April 24 for bronchitis and that he would need a CT scan, the other dated May 8 indicating again that the claimant had been seen on April 24, but indicating that the claimant was able to return to work.

As a result of the May 8 doctor's note indicating that the claimant was able to return to work, upon receiving the note on May 8 Ms. Wittman attempted to contact the claimant in order to get him scheduled back to work. The claimant's wife returned the call to Ms. Wittman and informed her that the claimant had been arrested on a DUI and assault charge and was currently in jail, that she did not know when he would be getting out of jail, but that she would call back the next day with further information. The employer heard nothing further from or on behalf of the claimant, and on May 10 the employer determined that the claimant had abandoned his position.

The claimant established a claim for unemployment insurance benefits effective July 23, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,675.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant quit, he would be disqualified unless it was for a 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 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. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). Benefits are denied.

Iowa Code section 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 August 17, 2006 decision (reference 01) is reversed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of May 10, 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 \$1,675.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs