IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GARY BROWN
Claimant

VAUGHN DELOSS CONSTRUCTION
Employer

APPEAL NO: 12A-UI-09846-B

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/01/12
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Vaughn DeLoss Construction (employer) appealed an unemployment insurance decision dated August 6, 2012, reference 01, which held that Gary Brown (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Spencer, Iowa on September 26, 2012. The claimant participated in the hearing. The employer participated through owner Vaughn DeLoss, employee Chris Wettrich and Attorney Donald Hemphill. Employer's Exhibits One through Four and Claimant's Exhibit A were admitted 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time laborer at $12.00 per hour on October 10, 2011. The employer never promised, suggested or guaranteed an increase in pay but the claimant effectively quit on June 14, 2012 because the employer would not pay him more than $12.00 per hour. The claimant discussed a pay raise with the employer at least two different times prior to June 13, 2012. On that date, he gave the employer a three page, single-spaced, typed letter demanding an increase in pay to $24.00 or $36.00 per hour.

The claimant had been working on this letter since May 7, 2012 and had initially indicated that both he and co-employee Chris Wettrich would find other work if they did not receive a pay raise. The claimant read the letter to Mr. Wettrich, who demanded his name be removed from the letter and this was done. Mr. Wettrich testified in the hearing and co-employee Paul Bird was not available for the hearing but did provide a notarized statement. Both employees confirmed that the claimant had stated multiple times that he would quit if the employer did not

give him a pay raise. The claimant gave the employer the letter on June 13, 2012 and asked him several times that day if he had read it. The employer did not fully read the letter until late that night but was still not willing to give the claimant a pay raise. When the claimant called the following morning, the employer arranged to meet to give him a check and to retrieve the keys.

The letter began by stating that the employer likes to consider himself a fair man but the wage the claimant is receiving is not a "fair" wage. The claimant worked on a transmission that the employer said would have cost $36,000.00 if he was billed for it. The employer then only had to pay $14,000.00 for parts and wages, which leaves a balance of $22,000.00 and the claimant thinks he deserves one third of the savings or $7,333.00. He stated, "In my opinion, a fair man would pay whoever was involved in creating a savings of $22,000 should be presented with about 1/3 of the amount saved, this would, using the figures I have presented above, result in compensation for me of $7333 for that project."

The direction of the letter then went into how inadequate the pay rate of $12.00 an hour is and how, "I have pretty much used up the entire extra I had saved over time." In the hearing, the employer disputed this allegation by the fact that the claimant was years behind on his child support since it had to be taken out of his pay. However, the letter then advised the employer that the claimant felt working for him was an adventure but that, "I have come to feel that YOU are stealing from me. YOU have stolen my excess that I had been able to accumulate over time. YOU have stolen my hope for the future….."

The claimant then put forth his specific requests: "I am requesting that you increase my hourly wage to $24.00 per hour. I believe this is "fair". The right thing, in my mind, would be more like $30 to $36 per hour for the work I do and have already done for you. The "right thing" would be for you to increase my wage rate to $24 to $36 per hour and to calculate my hours of work since January 1 this year to pay me for the difference between what I have received and that increased rate to be paid by the fourth of July." He added, "You say you like to be fair; I say you are the least fair to those who work with you."

On the final page of the letter, the claimant said that, "I can continue to help you make good money, but, I must have a greater share of that good money or I will be forced to do something else for a living. I enjoy working with you, I would like to continue working with you, but, I must have greater compensation for the work I perform for and with you or I will have to do something else for money,..." The claimant requested the employer to "seriously consider the things I have written here" and said, "I pray you see things my way, at least to a large degree and grant my request."

With regard to the unemployment case, the claimant contends that he was fired and that his only intent in providing the letter to the employer was to "open a dialog in which we could discuss the possibility of my receiving a greater rate of pay from him for the work I perform for him." In the hearing, both parties testified to the fact that on at least two occasions prior to June 13, 2012, the claimant had requested or discussed a pay raise and the employer was not willing to pay him more than $12.00 per hour. Additionally, the claimant's letter to Iowa Workforce dated September 5, 2012 confirms that he requested more money and/or a pay raise multiple times and each time it was flatly denied.

The most recent letter explained several scenarios in which the claimant had addressed his need for more money. He confirmed that he told the employer he wanted a third of what the employer saved on the transmission. The claimant wrote, "He replied in a manner that left no doubt in my mind that he was not going to pay me that amount." The claimant said, "I brought it up again later, but, he dismissed that idea as not something he wished to talk about." The

employer had him do some electrical work and the claimant wrote, "I told him before beginning work on this little project that he should pay me electrician wages for doing electrician work. He did not wish to discuss this either and paid me the same wage I was making doing whatever else I did for him." The claimant wrote, "Every time I suggested to Vaughn that the wages he was paying me were not consistent with the work I was performing for him he indicated his opinion was at variance with what I suggested."

The claimant filed a claim for unemployment insurance benefits effective July 1, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he refused to continue working for the employer at $12.00 an hour. The law presumes it is a quit without good cause attributable to the employer when an employee leaves because of dissatisfaction with the wages when the employee knew the rate of pay when hired. 871 IAC 24.25(13).

The claimant contends he did not intend to quit but the evidence demonstrates otherwise. He did not need to "open a dialog" with the employer to discuss a pay raise because he had been asking for more pay and talking about it for several months, if not longer. The letter dated June 13, 2012 was the claimant's last attempt to get more than $12.00 an hour and he made it clear to everyone that he was not going to stay without more.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

However, if the case were to be analyzed as a discharge, which is what the claimant contends, the separation would still be disqualifying. His refusal to continue working at the rate of pay he accepted at the time of hire and his unrelenting demands for more money can be considered insubordination. It was the claimant's choice to accept the job at that rate of pay and it was disruptive to the work environment for him to repeatedly pester the employer with unreasonable demands for higher pay. Additionally, the claimant had the audacity to tell the employer in his demand letter, "I have come to feel that YOU are stealing from me. YOU have stolen my excess that I had been able to accumulate over time. YOU have stolen my hope for the future….." The employer could no longer employ the claimant after such outrageous statements. The claimant's conduct was a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has also been established in this case.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008.

See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated August 6, 2012, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/css