

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT ORFITELLI
Claimant

APPEAL NO. 19A-UI-08999-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAKER GROUP
Employer

OC: 07/07/19
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 7, 2019, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 22, 2019 with good cause attributable to the employer. After due notice was issued, a hearing was held on December 10, 2019. Claimant Robert Orfitelli participated. Kirstin Sick represented the employer and presented additional testimony through Chris Knight. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Orfitelli was employed by Baker Group as a full-time Construction Wireman from 2016 until October 18, 2019, when he voluntarily quit due to dissatisfaction with the wages. Randy Etter, General Foreman facilitated Mr. Orfitelli being hired by the employer and functioned as Mr. Orfitelli's immediate supervisor. Mr. Etter reports to Chris Knight, Operations Supervisor. Throughout most of the employment Mr. Orfitelli was able to persuade the employer to pay him a wage that matched the wages the employer paid to journeyman electricians who were members of the International Brotherhood of Electrical Workers (IBEW) Local 347. Through some disagreement with the Local 347 administration, Mr. Orfitelli was not a member of Local 347. Mr. Orfitelli's wage increases usually came months after the journeyman electricians who

were members of Local 347 received their automatic wage increases on June 1. On June 1, 2018, the Local 347 journeyman electricians received a wage increase to \$35.99 per hour. In December 2018, the employer raised Mr. Orfitelli's wage to \$35.99 per hour. On June 1, 2019, the Local 347 journeyman electricians received a wage increase to \$36.50 per hour. In August 2019, the employer notified Mr. Orfitelli that it would not be raising his wage to \$36.50. The employer took the position that if Mr. Orfitelli wanted the wage associated with the union membership, he should join the union. Prior to quitting the employment effective October 18, 2019, Mr. Orfitelli notified the employer that he could not continue to report to work unless the employer provided him with the wage increase to \$36.50.

Mr. Orfitelli established an additional claim for benefits that was effective October 20, 2019 and received \$962.00 in benefits for the two-week period of October 20, 2019 through November 2, 2019. Baker Group is the sole base period employer for purposes of the claim. On November 6, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Orfitelli's separation from the employer. Kirsten Sick, Payroll Administrator, and Chris Knight, Operators Supervisor, participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.25(13) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The weight evidence in the record established a voluntary quit without good cause attributable to the employer. Mr. Orfitelli quit due to dissatisfaction with his wages. Mr. Orfitelli has been working for the same wage since December 2018. The employer had not decreased his wages. Despite notice from the employer in August 2018 that the employer would not be increasing the hourly wage, Mr. Orfitelli elected to continue working for the employer for another two months before he voluntarily separated from the employment. Mr. Orfitelli's quit was not in timely response to what he perceived to be a change in the conditions of the employment. Mr. Orfitelli is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Orfitelli must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Orfitelli received \$962.00 in benefits for the two weeks between October 20, 2019 and November 2, 2019, but this decision disqualifies him for those benefits. Accordingly, the benefits Mr. Orfitelli received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Mr. Orfitelli is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid for the two weeks between October 20, 2019 and November 2, 2019.

DECISION:

The November 7, 2019, reference 01, decision is reversed. The claimant voluntarily quit the employment effective October 18, 2019 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$962.00 in benefits for the two weeks between October 20, 2019 and November 2, 2019. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits paid for the two weeks between October 20, 2019 and November 2, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn