

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ROBERT E REESE
Claimant

APPEAL NO. 19A-UI-00833-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNNINGHAM INC
Employer

OC: 09/09/18
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 January 25, 2019, reference 04, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 20, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on February 12, 2019. Claimant Robert Reese did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Betsy Miller represented the employer and presented additional testimony through Loren Miller. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials.

ISSUES:

Whether Mr. Reese was discharged for misconduct in connection with the employment.

Whether Mr. Reese was laid off.

Whether Mr. Reese voluntarily quit without good cause attributable to the employer.

Whether Mr. Reese was overpaid benefits.

Whether Mr. Reese is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Reese was employed by Cunningham, Inc. as a full-time sheet metal worker from July 17, 2018 until December 20, 2018, when he voluntarily quit by walking off the job and not returning. On November 23, 2018, the employer recalled Mr. Reese from a temporary layoff. The employer subsequently assigned Mr. Reese to work at a jobsite in West Des Moines. The particular project was the West Des Moines City Hall. The employer's work on that project is expected to

last to December 2019. Loren Miller is Cunningham, Inc.'s Project Manager for the West Des Moines City Hall project. Chad Little is the employer's jobsite foreman for the project. Adam Fee is a journeyman sheet metal worker the employer assigned to the project. On December 20, 2018, Mr. Miller was at the jobsite for a meeting. On that day, Mr. Little was away from the jobsite and Mr. Fee was overseeing Mr. Reese's work. During the workday, Mr. Reese gathered his tools and left the jobsite. No one had told Mr. Reese to leave the jobsite. The employer continued to have work for Mr. Reese at the jobsite. After Mr. Reese walked off the job, Mr. Fee approached Mr. Miller and asked whether Mr. Miller had spoken to Mr. Reese because Mr. Reese had just gathered his tools and left. Mr. Miller had not spoken with Mr. Reese that day. Mr. Reese did not make further contact with the employer.

Mr. Reese established an original claim for benefits that was effective September 9, 2018 and an additional claim for benefits that was effective December 23, 2018. In connection with the additional claim for benefits, Mr. Reese received \$1,522.29 for the six weeks between December 23, 2018 and February 2, 2019. Cunningham, Inc. is not a base period employer in connection with the claim year that began for Mr. Reese on September 9, 2018.

On January 18, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Reese's separation from the employment. Betsy Miller, Human Resources Manager, submitted a written statement and other documentation in lieu of providing a verbal statement to the deputy. Ms. Miller's written statement outlined the circumstances under which Mr. Reese had quit the employment by walking off the job. Mr. Reese provided a verbal statement to the deputy that included multiple intentionally misleading statements. These included an assertion that the job was finished, that a supervisor had sent him home early, and that the supervisor had directed Mr. Reese to file for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

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.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The weight of the evidence in the record establishes that Mr. Reese voluntarily quit on December 20, 2018 by walking off the job during this shift, by not returning to the employment, and by discontinuing contact with the employer. The employer continued to have work for Mr. Reese at the project site, had not notified Mr. Reese of a layoff, and had not otherwise directed Mr. Reese to leave. The evidence establishes a voluntary quit without good cause attributable to the employer. Accordingly, Mr. Reese 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. Reese 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 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. Reese received \$1,522.29 for the six weeks between December 23, 2018 and February 2, 2019, but this decision disqualifies him for those benefits. Accordingly, those benefits constitute an overpayment of benefits.

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a

witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The written statement Ms. Miller submitted for the fact-finding interview was sufficiently detailed to satisfy the participation requirement. Even if the employer had not satisfied the participation requirement, the evidence establishes that Mr. Reese made multiple intentionally misleading statements during the fact-finding interview. Mr. Reese is required to repay the overpaid benefits. This employer is not a base period employer in connection with the claim year that began for Mr. Reese on September 9, 2018. Accordingly, the employer has not been charged for benefits in connection with Mr. Reese's December 23, 2018 additional claim. This employer's account shall not be charged for benefits.

DECISION:

The January 25, 2019, reference 04, decision is reversed. The claimant voluntarily quit the employment on December 20, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and 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 \$1,522.29 for the six weeks between December 23, 2018 and February 2, 2019. The claimant must repay the overpaid benefits. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs