

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES BROWN
Claimant

APPEAL NO: 12A-UI-02325-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 01/08/12
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Express Services, Inc. (employer) appealed an unemployment insurance decision dated March 2, 2012, reference 01, which held that Charles Brown (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2012. The claimant was not available when initially called for the hearing but called in to participate before the hearing had been completed. The employer participated through Owner Mike Schaul. Based on the evidence, the arguments of the party, 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 having considered all of the evidence in the record, finds that: The claimant began working intermittently as a temporary general laborer on August 2, 2010. He was assigned to work at Eagle Window from August 26, 2011 through Friday, January 6, 2012, when the assignment was completed.

The employer offered the claimant an assignment at Peosta Warehouse on January 10, 2012, but the claimant declined due to a funeral. The employer offered the claimant work at a company called Millard on January 11, 2012, but the claimant turned that down. He does not remember this particular job offer. The claimant turned down an offer of work at Hormel on January 13, 2012 because he was going out of town.

The claimant accepted a long-term assignment with My-T-M on January 18, 2012 and he began working on January 19, 2012. However, he walked off the job in the middle of his shift on January 19, 2012 because his hand hurt. The employer left a message for the claimant about an assignment at Hormel, but the employer did not hear from the claimant. The employer called

the claimant again on February 2, 2012 and offered work at Hormel. The claimant refused because he did not have enough gas. He told the employer if the employer paid for his gas, he would go to work.

The claimant began working at Airways on February 20, 2012, and he worked the next day also. He called in his absence on February 22, 2012, since he had other interviews. The claimant called in his absence on February 23, 2012 because of health issues. The employer provided work for the claimant at Berry Plastics and the claimant worked one day on February 24, 2012. The employer offered the claimant work at Hormel on February 27, 2012, but the claimant said he could not work because he was going to the hospital. The claimant testified in the hearing that he was not in the hospital.

The employer stopped providing work for the claimant after this point, since the claimant had demonstrated that he did not want to work even though work was available.

The claimant filed a claim for unemployment insurance benefits effective January 8, 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. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

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 by failing to work. The employer repeatedly offered him work and the claimant mostly refused the work but sometimes accepted and then walked off the job before the first day was completed. The evidence confirms the employer had work available and the claimant did not choose to work.

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.

Iowa Code section 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 section 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 March 2, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw