

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRODY M ESCHER
Claimant

D&D HORRAS FARMS
Employer

APPEAL 21A-UI-06829-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Respondent (1-R)**

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On March 5, 2021, D&D Horras Farms (employer) filed an appeal from the February 23, 2021, reference 03, unemployment insurance decision that allowed benefits based upon the determination Brody M. Escher (claimant) voluntarily quit due to a change in the contract of hire. The parties were properly notified about the hearing held by telephone on May 14, 2021. The claimant did not respond to the hearing notice and did not participate. The employer participated through Cherie and Dave Horras, Owners, and it was represented by Brian Fagan, Attorney at Law. The Employer's Exhibits 1 through 4 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories and the fact-finding documents.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a seasonal full-time Laborer beginning in September 2020. The claimant was originally hired as a semi-truck driver. However, within two weeks of hire, the employer's insurance company declined to have him on the insurance. The insurance company did agree that he could operate farm equipment on the employer's land if one of the other three employees was present. The claimant worked through November 23, when the harvest season

ended. The employer offered the claimant on-call or as needed work, but the claimant elected not to perform that work.

The administrative record reflects that claimant has received \$2,673.00 in unemployment benefits, since filing a claim with an effective date of January 3, 2021, for the nine weeks ending March 6, when his claim was locked due to a disqualifying separation with another employer. The administrative record also establishes that the employer provided written documentation for the fact-finding interview.

The employer paid the claimant a total of \$9,274.74 in gross wages during his employment. However, these wages are not on the claimant's wage history and the employer does not have an account number with Iowa Workforce Development (IWD). It does not appear the employer has paid unemployment insurance taxes on the wages paid to the claimant or other employees. Iowa has an exception to the definition of employer that exempts agricultural employers with fewer than ten employees, who pay less than \$20,000.00 in gross wages during a quarter, from paying unemployment insurance tax. The employer had at least four employees during the harvest and potentially paid gross wages in excess of \$20,000.00 during the fourth quarter of 2020, based on the wages paid to the claimant. Whether the employer is an employer as defined by Iowa Employment Security Law and required to pay unemployment insurance taxes has not been investigated or adjudicated by the Tax Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed.

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. 871-24.26(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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). The work the claimant was hired to perform full-time was completed. The employer offered him on-call or as needed work; however, that is a substantial change in the contract of hire. Benefits are allowed.

As benefits are allowed, the issue of overpayment because of this separation is moot and charges to the employer's account cannot be waived, pending the outcome of the remanded issue. Whether the employer is an employer as defined by Iowa Employment Security Law and required to pay unemployment insurance taxes is remanded to the Tax Bureau for investigation and adjudication.

DECISION:

The February 23, 2021, reference 03, unemployment insurance decision is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. The issue of whether the claimant was overpaid benefits because of this separation is moot and charges to the employer's account cannot be waived, pending the outcome of the remanded issue.

REMAND:

Whether the employer is an employer as defined by Iowa Employment Security Law and required to pay unemployment insurance taxes is remanded to the Tax Bureau for investigation and adjudication.



Stephanie R. Callahan
Administrative Law Judge

May 28, 2021
Decision Dated and Mailed

src/scn