

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 1999. He worked full time as a welder in the employer's garbage and recycling business. His last day of work was August 25, 2005. He normally worked from 6:00 a.m. to 2:30 p.m., Monday through Friday.

On Thursday, August 25, Mr. Carter, one of the business owners, instructed the claimant to work on the floor of a trailer; he told the claimant to apply a patch to a hole on the floor of the trailer to cover the hole until a new floor could be installed the following week. The claimant refused, stating that he did not know how to work on aluminum very well and that the patch would not work. Mr. Carter was not asking the claimant to weld the aluminum, and indicated that when the new floor arrived and would need to be welded on, the claimant would have help; at the moment he was only directing the claimant to screw the patch into the floor base. The claimant again refused, and then began to complain about his wages, indicating that he was not being sufficiently paid to do that kind of work. Mr. Carter responded that if the claimant was still refusing to do the work as directed, he "need(ed) to go home." The claimant then proceeded to leave, and Mr. Carter had the claimant turn over his keys.

The claimant did not call or report for work at 6:00 a.m. on Friday, August 26; rather, he came in to the workplace at approximately noon to pick up his paycheck. When Mr. Wallander, the shop manager, asked him if he was returning to work, the claimant responded that he would not return to work for his regular wage of \$12.25 per hour, that it would take \$15.25 per hour for him to return to work. Mr. Wallander told the claimant he would need to discuss the matter with Mr. Carter. There was no further communication until the following Friday, September 2, 2005, when Mr. Wallander again asked the claimant if he was returning to work and the claimant responded he had not yet talked to Mr. Carter and that he had "other things going."

On Saturday, September 6, the claimant called and left a message for Mr. Carter to call him. Mr. Wallander returned the call for Mr. Carter on the next workday, September 6. When Mr. Wallander again asked the claimant if he was returning to work, the claimant again responded that he would not return at \$12.25, but would come back for \$14.25. Mr. Wallander checked with Mr. Carter, who again responded that the claimant could return at the \$12.25 rate, but nothing more. Mr. Wallander passed this information on to the claimant, who then declined to return to work.

The claimant established a claim for unemployment insurance benefits effective August 28, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$3,240.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). Here, because of Mr. Carter's request for the keys before the claimant went home, there may have been some initial ambiguity as to whether the claimant quit or was discharged; however, the employer never directly stated that the claimant was discharged, and any initial ambiguity was resolved by the employer's communication with the claimant the next day indicating it was expecting the claimant to return to work. Both by the claimant's refusal to do the work as directed and by his subsequent refusal to return to work for his agreed-upon pay, the claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code §96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21),(23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). Quitting because of dissatisfaction with the wage paid, where the claimant had previously known and accepted the wage is not good cause. 871 IAC 24.25(13). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

In the alternative, treated as a discharge, it was for work-connected misconduct. The claimant's refusal to perform the work as directed shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Iowa Code §96.5-2-a; 871 IAC 24.32(1)a.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's September 19, 2005 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 28, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,240.00.

ld/s