

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN K BRYAN
Claimant

APPEAL NO. 10A-UI-09577-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE SOW CENTERS INC
Employer

OC: 05/23/10

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hawkeye Sow Centers, Inc. (employer) appealed a representative's June 25, 2010 decision (reference 02) that concluded Benjamin K. Bryan (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Tricia Adams appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 November 23, 2009. He worked full-time as a herdsman at the employer's Leland, Iowa, sow unit. He normally worked from about 6:00 a.m. or 7:00 a.m. until between 2:00 p.m. and 4:00 p.m., Monday through Friday, and was scheduled to work every third weekend. His last day of work was April 23. He was scheduled to work the weekend, Saturday, April 24, and Sunday, April 25, but was a no-call, no-show for those shifts. He was also scheduled for work on Monday, April 26, and Tuesday, April 27, but again was a no-call, no-show for those shifts. When the claimant had not reported for work or contacted the employer by April 27, the employer concluded that the claimant had voluntarily quit by job abandonment in order to deal with personal issues.

The claimant did not recontact the employer until approximately early July, when he contacted his barn leader to learn if he could be rehired, indicating that he had resolved his personal problems. The barn leader contacted the employer's recruitment director, and an application was sent to the claimant, but the claimant did not apply for reemployment with the employer.

The claimant established a claim for unemployment insurance benefits effective May 23, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 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 and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). 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). 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. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded to the Claims Section.

DECISION:

The representative's June 25, 2010 decision (reference 02) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of April 24, 2010, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw