

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORENZO REYES

Claimant

APPEAL NO: 14A-UI-11326-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BATES ROOFING LLC

Employer

OC: 10/05/14

Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 27, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the November 20 hearing. Julie Bates and Joseph Bates appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct or did the claimant voluntarily quit this employment for reasons that do not qualify him to receive benefits?

Has the claimant been overpaid any benefits?

Is the claimant required to pay back any overpayment of benefits or will the employer's account be charged?

FINDINGS OF FACT:

The claimant started working for the employer in October 2013. The claimant worked as a full-time seasonal laborer. The employer considered the claimant a good employee and his job was not in jeopardy prior to October 8, 2014.

About two weeks before October 8, the claimant hired two new employees. These employees spoke English, but their primary language was Spanish. The employer did not know the claimant spoke Spanish until the new employees started working. The employer does not speak or understand Spanish. The morning of October 8 the employer told the claimant to speak English at work. The employer gave this same direction to the new employees, but the claimant may not have been heard this.

When the claimant was picking up trash on the roof, he asked one of the new employees for something in Spanish. The employer did not know what the claimant said and asked him where he was at. After the claimant gave him the address of the work site, the employer told him he was in America and he needed to speak English. The employer acknowledged his comment was not necessary. The claimant became upset and the two men engaged in a verbal argument. The employer was upset with the claimant and told him to get off the roof. The employer expected the claimant to get off the roof and wait for the employer to calm down so the two of them could talk. The claimant was so upset and humiliated by the employer's comments that when he got off the roof, he went home.

Neither the claimant nor the employer contacted the other person after they had an opportunity to calm down. The employer would have continued the claimant's employment if he had contacted the employer. The employer had another employee take the claimant's last pay check to the claimant's home. The claimant felt the employer did not respect the claimant and his primary language. He expected the employer to contact him to apologize. The claimant did not work after October 8, 2014.

The claimant established a claim for benefits during the week of October 5, 2014. He filed claims for the weeks ending October 18 through November 22, 2014. He received his maximum weekly benefit amount of \$192 for each of these weeks. Julie Bates participated at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When the claimant and employer were on the roof, they engaged in a verbal argument. They both testified that the other person swore when they were on the roof. Regardless of whether one or both swore, they were both upset and angry. The employer recognized the situation had gotten out of hand and told the claimant to leave the roof. The claimant initially testified the employer told him to leave the job site, but later testified the employer told him to get off the roof. When the claimant got off the roof, he was angry and upset. He felt humiliated for speaking his primary language and walked off the job without waiting for the employer to calm down so they both could talk to one another. The claimant testified that after he had worked hard for the employment, he did not want to work for the employer after the employer humiliated him for speaking his primary language. The evidence supports a conclusion that the claimant voluntarily quit his employment when he left work after getting off the roof on October 8, 2014.

When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2). While the employer's comment on October 8 was inappropriate, the employer had justifiable business reasons for directing employees to speak English when working on the roof. The isolated verbal confrontation between the employer and the claimant does not rise to the level of intolerable or detrimental working conditions. The claimant established personal reasons for quitting, but his reasons do not qualify him to receive benefits. As of October 5, 2014 the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant has been overpaid \$1152 in benefits he received for the weeks ending October 18 through November 22, 2014.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. Since the employer participated at the fact-finding interview, the claimant is responsible for paying back the \$1152 overpayment.

DECISION:

The representative's October 27, 2014 (reference 01) determination is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. As of October 5, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid \$1152 in benefits he received for the weeks ending October 18 through November 22, 2014. The claimant is required to pay back the benefits he was not legally entitled to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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