

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT LUCAS
Claimant

APPEAL NO: 12A-UI-02763-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DOHERTY EMPLOYMENT GROUP
DOHERTY STAFFING SOLUTIONS**
Employer

**OC: 01/29/12
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Doherty Employment Group (claimant) appealed an unemployment insurance decision dated March 16, 2012, reference 01, which held that Robert Lucas (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 April 6, 2012 and it was completed on May 14, 2012. The claimant participated in the hearing on April 6, 2012 but was not available when called for the hearing on May 14, 2012. The employer participated through Glenna Niemiec, Unemployment Insurance Administrator and Ann Dodge, On-Site Manager. Employer's Exhibits One through Three was admitted into evidence. Based on the evidence, the arguments of the parties, 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 considered all of the evidence in the record, finds that: The claimant was hired on March 1, 2011 as a general laborer and he was placed at Cargill in an on-going assignment. He took three weeks off for dental surgery after May 18, 2011 and returned to work June 10, 2011. The claimant returned to work and subsequently walked off the job on July 27, 2011 after working two hours of his shift. The employer did not hear from him for several weeks after that. Continuing work was available.

The claimant denied walking off the job and testified that he had requested time off during the week of August 8, 2011 so he could have oral surgery. He said his last day of work was on August 9, 2011 but claims he left with permission. The claimant said his surgery was completed on August 15, 2011 and after he was released to return to work, he called the employer but the calls were not returned.

The employer questioned the claimant as to how many times he had oral surgery and he indicated he only had one surgery. The employer asked the claimant whether he had taken time off in May 2011 for oral surgery and he said no. The hearing was continued so the claimant and/or the employer could provide any supporting documentation.

The claimant did not provide any additional documents. The employer provided the time and wage records for the claimant. His last day of work was July 27, 2011; he clocked in for work at 7:28 a.m. and clocked out at 9:09 a.m. The claimant was paid for 1.68 hours on July 27, 2011 in a check dated August 4, 2011. He earned \$11.00 per hour for a gross amount of \$18.48 and a net amount of \$17.43. There were no additional time or wage records after July 27, 2011.

The claimant filed a claim for unemployment insurance benefits effective January 29, 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 walking off the job on July 27, 2012. He further carried out that intent by failing to call or return 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 § 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 § 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 16, 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/pjs