

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DENNIS J NORTHWAY JR
PO BOX 71
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CASCADE LUMBER COMPANY
1000 – 1ST AVE E
CASCADE IA 52033-0220

Appeal Number: 06A-UI-04885-JTT
OC: 04/16/06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6(2) – Timeliness of Protest
Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Cascade Lumber Company filed a timely appeal from the May 4, 2006, reference 02, decision that allowed benefits and deemed the employer's protest untimely. After due notice was issued, a hearing was held on May 23, 2006. Claimant Dennis Northway did respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Human Resources Manager Will Noonan represented the employer. The administrative law judge took official notice of the Agency administrative file. Department Exhibit D-1 and Employer's Exhibit One were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A Notice of Claim was mailed to the employer's address of record on April 18, 2006. The Notice of Claim indicated on its face that the deadline for the employer's protest was April 28, 2006. The employer received the Notice of Claim prior to the deadline for protest. On April 24, Mr. Noonan drafted the employer's protest. On April 28, Mr. Noonan transmitted the document to Iowa Workforce Development. At the time Mr. Noonan faxed the protest, he recorded on the face of the employer's copy the date and time he faxed the protest, and initialed the protest. The faxed protest received by the Agency indicates on its face that it was faxed from the employer on Friday, April 28, 2006. An Agency representative erroneously marked the document received on May 1, 2006.

Dennis Northway was employed by Cascade Lumber Company as a full-time production worker from November 8, 2005 until April 17, 2006, when he quit. Mr. Northway was assigned to work inside the plant building trusses, but worked as needed in the yard of the plant, where he operated a forklift to load finished product for transport. Shortly before Mr. Northway's quit, the employer decided that sufficient work existed in the yard to make those duties a full-time position. Based on Mr. Northway's prior performance of his yard duties, Mr. Northway was not selected for the full-time yard position. The employer continued to have the full-time production worker position available for Mr. Northway at his same rate of pay. Mr. Northway resigned in response to not being chosen for the newly created full-time yard position.

Mr. Northway established a claim for benefits that was effective April 16, 2006, and has received benefits totaling \$417.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that the employer's protest was timely. It does.

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

The greater weight of the evidence in the record establishes that the employer's protest was submitted and received in a timely fashion, but not marked received until a later date. The protest was timely and the administrative law judge has jurisdiction to consider the issues related to the separation from employment.

The next question is whether the evidence in the record establishes that Mr. Northway voluntary quit was for good cause attributable to the employer. It does not.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

871 IAC 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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record indicates that Mr. Northway voluntarily quit the employment in response to not being selected for the newly created full-time position yard position. The evidence does not support a conclusion that there was a substantial change in the conditions of Mr. Northway's employment. Though Mr. Northway may no longer have been needed to help out in the yard, his primary responsibilities as a production worker continued to be available to him, along with his full-time status and same pay. Mr. Northway's quit was prompted by dissatisfaction with the work environment. Quits due to such reasons are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Northway's quit was without good cause attributable to the employer. Accordingly, Mr. Northway is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Northway.

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 Mr. Northway received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Northway must repay to Iowa Workforce Development. Mr. Northway is overpaid \$417.00.

DECISION:

The Agency representative's decision dated May 4, 2006, reference 02, is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

jt/kkf