

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK MARTIN
Claimant

APPEAL NO. 08A-UI-03680-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARKER COMPANY LTD
Employer

**OC: 03/09/08 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5-1 – Voluntary Quit
871 IAC 24.25(4) – Voluntary Quit Without Good Cause
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Barker Company Limited (claimant) appealed an unemployment insurance decision dated April 8, 2008, reference 01, which held that Mark Martin (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 30, 2008. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Dick Pietzman, Plant Manager. Employer's Exhibits One through Seven were admitted into evidence. Based on the evidence, the arguments of the party, 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 having considered all of the evidence in the record, finds that: The claimant was hired as a full-time assembly worker on June 30, 2003. He sustained a non-work-related back injury due to a motorcycle accident in 2006 and a non-work-related neck injury from falling off a ladder in 2007. These injuries prevented him from working full-time hours. He was considered part-time on February 28, 2008 and a form letter dated March 11, 2008 was sent to him indicating his health insurance would be dropped since he quit his employment. The employer mistakenly sent this letter as the claimant was still considered an employee. An explanation and a corrected letter were sent to the claimant on March 13, 2008. The employer advised him since he had not worked sufficient hours, he was no longer eligible for the full-time health plan but was eligible for COBRA as a self-paying participant.

The claimant did not answer the employer's telephone calls or return the calls but filed his claim for unemployment insurance benefits. A fact-finding interview was held on April 1, 2008 during which the employer confirmed the claimant had not been terminated and was still employed. The claimant indicated that he was released to return to work on March 26, 2008, but the release was never provided to the employer. The plant manager told the claimant at the fact-finding interview that he needed to return to work or contact the employer by April 2, 2008. The claimant did not return to work or contact the employer. The plant manager subsequently went to the claimant's house to talk to him. The plant manager saw the claimant looking out a window and they both waived to each other but the claimant refused to answer the door.

A certified letter was sent to the claimant on April 2, 2008 and he signed for its receipt on April 5, 2008. The letter advised him he had three days from receipt of that letter to contact the employer regarding his work status. Failure to contact the employer within three days would result in his termination according to the employer's three day no-call/no-show rule. The claimant did not contact the employer and a subsequent letter was sent to him on April 11, 2008. The letter was signed for on April 12, 2008 and it advised the claimant he was considered to have quit his employment when he failed to call or report to work for three days ending April 9, 2008.

The claimant filed a claim for unemployment insurance benefits effective March 9, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without 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 accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated his intent to quit and acted to carry it out by failing to call the employer or return to work.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was deemed a voluntary quit on April 9, 2008 after three days of no-call/no-show. 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. The claimant failed to participate in the hearing and there is no evidence to establish that he quit with good cause attributable to the employer. Benefits are therefore denied.

Iowa Code § 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 unemployment insurance decision dated April 8, 2008, 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 claimant is overpaid benefits in the amount of \$1,264.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw