

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE BOILEAU
Claimant

APPEAL NO: 09A-UI-03621-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWIN COUNTY DAIRY INC
Employer

OC: 02-08-09
Claimant: Respondent (2R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 2, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 1, 2009. The claimant participated in the hearing. Steve Neuzil, Supervisor; Tony Bringman, Assistant Crew Leader; and Benjamin Hayek, Employer's Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Twin County Dairy from July 23, 2008 to January 28, 2009. The claimant received two written warnings January 28, 2009. He was warned about not performing his duties as instructed by his crew leaders January 26, 2009, and warned for being two hours and 34 minutes late January 27, 2009 (Employer's Exhibit Five). The employer called the claimant's ride five minutes after the start time of his shift January 27, 2009, and he said the claimant would be there by 2:30 p.m. The claimant went back to bed and did not clock in until 3:34 p.m. (Employer's Exhibit Five). The claimant was upset about the warnings and said he was not coming in the next day. The employer said he might as well quit now and the claimant said, "Fine, I quit," and went to the locker room and then left. The employer took him off the schedule at that time. The claimant received several written warnings about failing to perform his job as expected and standing around and not cleaning up (Employer's Exhibits One through Three). He signed a written verbal warning in November 2008 (Employer's Exhibit Two).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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 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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6-2. The claimant was upset about receiving the warnings. It appears, however, that the warnings were well deserved, because the claimant received several verbal warnings about standing around and not cleaning up and generally being a burden on his co-workers. Despite many verbal warnings the claimant's conduct did not improve. When confronted with the two written warnings January 28, 2009, he said he would not be in the next day. While the claimant testified he planned to ask for that day off anyway, it seems more likely that he said he would not be in January 29, 2009, because he was angry. The employer interpreted his statement to mean he was going to quit and told him he might as well quit right away and the claimant responded, "Fine, I quit." Under these circumstances the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, 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 not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The March 2, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as 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 matter of determining the amount of the

overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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