

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD G STRICKLAND
Claimant

APPEAL NO. 07A-UI-01459-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF CHEROKEE
Employer

**OC: 01/07/07 R: 1
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, City of Cherokee, filed an appeal from a decision dated February 1, 2007, reference 01. The decision allowed benefits to the claimant, Ronald Strickland. After due notice was issued, a hearing was held by telephone conference call on February 26, 2007. The claimant participated on his own behalf. The employer participated by Mayor Dennis Henrich, Councilman Bob Leach and Mick Malloy and was represented by Attorney Wally Miller. Exhibits One, Two, Three and A were admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Ronald Strickland was employed by City of Cherokee from May 1, 2003 until April 25, 2006. He was the full-time city administrator. The citizens of Cherokee were critical of his actions while in office and gave rise to a politically sensitive situation. Mayor Ronald Strickland and Councilman Dwight Brase had informally talked to the claimant about him resigning due to the situation, but no specific decision had been made by the council as a whole as to his future employment.

On April 26, 2006, the claimant and his attorney attended the council meeting and negotiated a separation and “general release” document. He was given severance, vacation, and “general damages” pay in return for which he released the employer permanently of all future claims, including unemployment benefits.

Ronald Strickland has received unemployment benefits since filing a claim with an effective date of January 7, 2007.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant voluntarily submitted his resignation to the employer on April 26, 2006, in return for a settlement agreement. The city council had not made any official decision of record about his employment, and he was not threatened with discharge if he did not resign. Although everyone was aware the political climate was uneasy, the claimant could have remained as the city administrator after April 25, 2006, pending further action by the council.

His resignation was the quid pro quo for the settlement agreement in which he received sums of money and agreed to release all claims. In Edward v. Sentinal Management Company, 611 NW2d 366 (Minn. App. 2000) the Minnesota Court of Appeals concluded that claimant who resigned as a part of a workers' comp settlement package left employment voluntarily without good cause attributable to the employer because he had the option of remaining as an employee while pursuing his workers' compensation claim. The claimant's intention in this case to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. 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 seems to feel his release of claims against the employer ended December 31, 2006, the date his contract of employment would have ended. However, the settlement agreement is very clear that the release of claims is permanent, and does not end at the same time the contract would have. The record establishes the claimant quit without good cause attributable to the employer and he is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 1, 2007, reference 01, is reversed. Ronald Strickland is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,004.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css