

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L CHARVES

Claimant

APPEAL NO. 13A-UI-01879-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST CARTAGE & TRAILERS INC

Employer

OC: 12/23/12

Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 6, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 14, 2013. The claimant did participate along with his friend Bart Montgomery and his wife Judy Charves. The employer did participate through Bill Banta, Co-Owner; Donna Banta, Co-owner and President; Brian Banta, Shop Coordinator; Rex Wilson, Mechanic; and Scott Syring, Mechanic.

ISSUES:

Was the claimant discharged due to job-connected misconduct or did he voluntarily quit without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a mechanic full time beginning on March 27, 2008 through December 27, 2012 when he voluntarily quit without discharge. The claimant had not been working on December 26 and 27 due to a non-work-related injury he suffered to his foot that left him in a boot. On December 26 the claimant went into the office and asked Mr. Bill Banta about a Christmas bonus and was told he would not be getting one due in large part to his work performance during the year and to a lesser extent due to the economic conditions. No employee is ever guaranteed a holiday or Christmas bonus. The claimant argued with Bill Banta in Mr. Banta's office and told him he was quitting if he did not get a bonus. Mr. Bill Banta never told the claimant on December 26 that he was discharged nor did he ever agree to give him a bonus. As the claimant was leaving the property he saw Brian Banta and said something to the effect, "it's been nice working with you, sometimes." Mr. Brian Banta spoke to his father who told him what the claimant has said and thought the claimant was quitting.

On December 27 around 3:00 p.m. the claimant sent a text message to Brian Banta telling him he was coming into the shop to pick up his personal tools and equipment. Thinking the claimant was coming in to pick up his things to leave for good, Mr. Brian Banta told him he would need a written letter of resignation from him. The claimant arrived at the shop around 5:00 p.m. with his friend Bart Montgomery and asked to use shop equipment to perform a personal repair. When he was told that he would not be allowed to use shop space and equipment to make a personal repair he entered into a verbal altercation with his direct supervisor, Brian Banta. This was not the first verbal altercation the claimant had while at work. In June of 2012 Brian Banta was giving work instructions to another employee; Rex Wilson. The claimant barged into the conversation and got into an argument with the supervisor about a situation that did not concern him at all. The claimant became loud, verbal and aggressive while yelling and screaming profanities at Mr. Brian Banta. He was given a final written warning at that time by co-owner Bill Banta and told that if he ever talked to a supervisor again in a threatening aggressive or profanity laced manner he would be discharged. He had been given verbal warnings prior to June 2012.

When the claimant became verbally abusive swearing and yelling at Mr. Brian Banta on December 27 he was told to vacate the property.

Claimant has received unemployment benefits since filing a claim with an effective date of December 23, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer and in the alternative was discharged due to job-connected misconduct.

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.

871 IAC 24.25(13) 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 section 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 section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

871 IAC 24.25(6) 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 section 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 section 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:

(6) The claimant left as a result of an inability to work with other employees.

871 IAC 24.25(22) 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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

The claimant was never promised or guaranteed a bonus. Nor did Mr. Bill Banta tell him on December 26 that he was discharged. In fact, Mr. Bill Banta also told the claimant's wife that he was not discharged. The claimant voluntarily quit that day because he did not get a bonus, though none was due him and because he could not get along with this supervisor and the owners. By stating to Mr. Brian Banta along the lines of "it's been nice working with you, sometimes," the claimant indicated his intention to voluntarily quit. Particularly, when he said he was coming in to pick up his tools and equipment. The claimant voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

Even if there were no evidence that the claimant voluntarily quit on December 26, the administrative law judge alternatively concludes that the employer rightfully discharged the claimant December 27 when he again used aggressive, verbally abusive language towards his supervisor Brian Banta because Mr. Banta would not let him use company equipment for a personal repair. The claimant was given a final written warning for similar conduct on June 19, 2012.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant knew from prior warning that he was not allowed to verbally abuse his supervisor when he did not get his way. The claimant's actions on December 27 amount to substantial job-connected misconduct and are sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. 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 may 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. If so, 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.

DECISION:

The February 6, 2013 (reference 01) decision is reversed. Claimant voluntarily left the 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.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll