

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOHAMED A OLOW
Claimant

APPEAL NO: 13A-UI-11163-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 08/25/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
871 IAC 24.26(6)b – Injury Employment Related Separation
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 25, 2013, reference 04, that held the claimant voluntarily quit with good cause attributable to the employer on August 16, 2013, and benefits are allowed. A telephone hearing was held on November 4, 2013. The claimant, and Interpreter, Karim Allin, participated. Lindy Helm, HR Specialist, and Dwight Ferguson, Safety Manager, participated for the employer.

ISSUE:

Whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired September 11, 2012, and last worked for the employer as full-time general production labor on August 14, 2013. The claimant told the employer on August 16 he was quitting due to wrist pain.

During the period from October 18, 2012 to May 22, 2013 claimant went to employer first aid station fourteen times for wrist pain. He was given ice and wrist bands. After treatments he would get better. Since he got better, the employer did not send him for doctor evaluation.

The employer had placed claimant on a safety improvement plan because he was hurting himself by not following work procedures. The employer observed claimant would go to the first aid station to take breaks and he would refuse treatment.

Claimant had a private doctor visit on August 15. The doctor did not advise claimant to quit his job.

The employer HR person Helm participated at department fact finding. Claimant has received unemployment benefits totaling \$2,051.00 through the week ending October 26, 2013.

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.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to is employment-related injury on August 16, 2013, because he failed to adequately notify the employer with competent evidence.

Claimant admits he had a visit with a private doctor on August 15 who did not advise him to quit employment for the health reason he offers in this hearing. He offered no medical statement from the doctor. The employer noted claimant had been treated at first aid and got better. He had not been to first aid since May 22. The employer had no reason to believe it needed to make any accommodation.

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.

The administrative law judge further concludes claimant is overpaid benefits \$2,051.00 as the department record shows he received them during a seven-week period ending October 26, 2013. Claimant is not granted relief from repayment as the employer personally participated at department fact finding.

DECISION:

The department decision dated September 25, 2013 reference 04, is reversed. The claimant voluntarily quit without good cause attributable to the employer on August 16, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$2,051.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css