

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS LAUMBACH
Claimant

APPEAL NO: 06A-UI-07812-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIBERTY FOOD SERVICE INC
Employer

OC: 06-25-06 R: 01
Claimant: Respondent (2)

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 July 28, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 12, 2006. The claimant participated in the hearing. David Murphy, Vice-President, and Ann Storm, Human Resources, participated in the hearing on behalf of the employer with Attorney Dave Patton.

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 maintenance/truck driver/cook for Liberty Food Service from July 12, 2005 to June 21, 2006. The claimant quit May 1, 2006, because he did not receive overtime pay he felt he earned and because he felt he was being asked to drive illegally. After a settlement meeting May 26, 2006, the claimant returned to work May 30, 2006, as an hourly employee making \$11.80 per hour with a pay rate of \$17.70 per hour after 40 hours per week beginning on or before May 26, 2006, to do such duties as assigned, including truck driving, delivery, cafeteria and equipment set up, equipment repair, and such other duties as are assigned from time to time. It is the parties' intent that such position will average 50 hours per week. The agreement also stated the claimant would be paid \$1,000.00 for past work performed. The claimant returned to work but felt the employer still wanted him to drive in violation of DOT regulations and would not designate the truck with a hazmat sign. The employer testified it told him not to drive in violation of the DOT regulations and it has asked the DOT about the hazmat sign and was told it did not have to carry the sign if the tanks are 100 gallon tanks like those used by the employer. On June 21, 2006, Vice-President of Operations David Murphy called the office and asked Human Resources Representative Ann Storm if she knew where the claimant was and Ms. Storm went to the claimant's office and

found his time sheet, phone, and credit card laying on his desk and assumed the claimant left his job. Earlier that morning, Ms. Storm had a conversation with the claimant and he asked about receiving his auto allowance. The owner had determined the claimant would not receive an auto allowance because he was now an hourly employee, so Ms. Storm told him to turn in his mileage claim. The claimant became very upset and said, "This is bullshit. I've worked my ass off for this company." Ms. Storm said he was getting paid to do his work and the claimant replied that he was being treated like a 5-year-old. The claimant then threw cables on the ground and walked away. He had also expressed concern that the internet was removed from the computer in his office. He did not speak to the employer about any of his concerns after he was rehired and the employer did not know he was considering leaving his job. The claimant submitted his resignation June 21, 2006, citing the fact that he and the owner "couldn't see eye to eye" and he was not happy with the employer and could not continue working there.

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 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.

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 section 96.6-2. While the claimant was upset with his work environment and frustrated with the owner of the company, he has not demonstrated that his leaving was for unlawful, intolerable, or detrimental working conditions. Although he testified the employer asked him to drive illegally, the evidence does not show that to be true. The employer credibly testified it told him to drive legally and the employer called the DOT to ask about placing a hazmat sign on the truck but was told a truck carrying that amount of fuel did not require a hazmat designation. Finally, while the claimant contends he did not receive the correct amount of pay, the settlement agreement signed prior to his return May 30, 2006, paid him \$1,000.00 as compensation for past work performed. The claimant did not tell the employer he intended to quit if his concerns were not addressed. Consequently, the administrative law judge concludes the claimant voluntarily left his employment and has not demonstrated that his leaving was for good cause attributable to the employer. Therefore, benefits are denied.

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.

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 July 28, 2006, reference 01, decision is reversed. The claimant voluntarily left 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 claimant is overpaid benefits in the amount of \$4,212.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw