

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARL L KOSEK
Claimant

APPEAL NO. 10A-UI-04582-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LARRY JOHNSON INS AGENCY INC
Employer

**Original Claim: 02/14/10
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Larry Johnson Insurance Agency, Inc. (employer) appealed a representative's March 16, 2010 decision (reference 01) that concluded Carl L. Kosek (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2010. The claimant participated in the hearing. Larry Johnson appeared on the employer's behalf and presented testimony from one other witness, Emily Burcham. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 31, 2009. He worked full-time as a customer service producer in the employer's insurance agency, working on an hourly wage plus commission basis. His last day of work was February 19, 2010.

Toward the end of 2009, the employer had announced that with the new year, he expected a ramping up of sales efforts and results. Toward the end of January 2010, Mr. Johnson discussed with the staff in general that expectations were not being met and that if there was not improvement, someone might have to be laid off. He indicated that he expected producers, including the claimant, to sell 30 automobile policies and 10 home policies within the next several weeks.

On February 19 Mr. Johnson was again having individual meetings with the staff to discuss progress on the goals and objectives. When the claimant came in for his meeting, he quickly indicated that he knew he was not "getting anywhere," that he was unable to get the number of

sales or even appointments expected. Mr. Johnson commented that it did not seem that the claimant liked the work. The claimant responded that "I think it sounds like I'm done." He then left the employer's offices, feeling that he had been discharged or laid off, even though Mr. Johnson had not said that was the case; Mr. Johnson, upon discovering that the claimant had left the offices, concluded that the claimant had quit.

The claimant established a claim for unemployment insurance benefits effective February 14, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that the separation was not "voluntary," as he had not desired to end the employment; he argues that employer had clearly implied that he was going to be laid off or discharged if he failed to meet the sales goals, and that in the meeting Mr. Johnson had not told him he was not discharged, so that the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee that are construed as being voluntary quit of the employment, such as where an employee believes he had been discharged but where the employer has not clearly discharged the employee. 871 IAC 24.25.

The claimant left the employer without being clearly told that he was in fact discharged or laid off; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Where an employee quits because of a belief that a layoff is imminent but has not in fact been told of an effective date of a layoff, it is a quit without good cause attributable to the employer. 871 IAC 24.25(29). The claimant has not satisfied his burden. 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 ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's March 16, 2010 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 19, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw