

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL G FISHER
Claimant

APPEAL NO. 13A-UI-10942-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIELD BROS MOVING INC
Employer

OC: 01/06/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 17, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on October 24, 2013. The claimant participated personally. The employer participated by Joe Field, Vice President; and Jay Field, President. Johnigan Stewart was a witness for the employer. The record consists of the testimony of Michael Fisher; the testimony of Joe Field; the testimony of Jay Field; the testimony of Johnigan Stewart; Claimant's Exhibits A-D; and Employer's Exhibit 1.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer;

Whether the claimant has been overpaid unemployment insurance benefits;

Whether the claimant is required to repay the benefits; and

Whether the employer's account shall be charged for benefits paid.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a moving company. The owner also have another business called Déjà vu, which is a consignment shop, and employees of the moving company also work at the consignment shop. The claimant was hired in 2010 and worked as a mover and laborer. He also supervised crews when Jay Field was not available. His last day of work was August 13, 2013. The claimant quit his job on August 13, 2013.

The series of events that led to the claimant's separation of employment began the week before when he received a paycheck from Field Brothers Moving and a check from Déjà vu for his

wages. The claimant did not understand why he would get two paychecks. The employer was attempting to separate labor done for Field Brothers Moving and labor done for Déjà vu. The claimant felt that he had been shorted his overtime but the situation was explained to him by the employer. The claimant cashed both checks and said nothing further about any problems he with the amount of pay and how he was paid.

The claimant returned to work on Monday August 12, 2013. On August 13, 2013, he got into an argument with Jay Field. The claimant threw up his hands and said "I'm out of here." Mr. Field said to "get on down the road."

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is not eligible for unemployment insurance benefits. The findings of fact show how the credibility issues were resolved by the administrative law judge. The most reasonable inference from the evidence is that the claimant was dissatisfied with the working environment and the source of his dissatisfaction came from several sources. He felt he had been shorted on overtime pay and was confused by the two checks, even though the employer had a plausible reason for giving him two checks. He was irritated with another employee who worked on his crew. None of these reasons constitute good cause attributable to the employer. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a –b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. However, because the employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer will be charged for benefits paid.

DECISION:

The decision of the representative dated September 17, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant will not be required to repay any benefits received and the employer's account is subject to charge for the benefits paid to the claimant.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css