

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WADE S WEABLE

Claimant

APPEAL NO. 08A-UI-01787-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEAKER PAINTING INC

Employer

**OC: 11/18/07 R: 03
Claimant: Appellant (3)**

Section 96.4(3) – Able and Available

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Wade Weable filed an appeal from a representative's decision dated February 18, 2008, reference 01, which denied benefits from January 6 through January 26, 2008 on a finding that the was not available for work. After due notice was issued, a hearing was held by telephone on March 6, 2008. Mr. Weable participated personally. The employer participated by Laurie Johnson, Secretary.

The hearing record was left open to allow Mr. Weable to provide confirmation of the dates he was in jail. The documentation was received and a copy made available to the employer. The administrative law judge requested and received a clearer copy of the documentation directly from the Linn County Sheriff's office and provided copies to both parties. The documentation received from the sheriff's office conflicts with that provided by Mr. Weable. The documentation was relevant to the issue of Mr. Weable's availability prior to when he was recalled to Feaker Painting, Inc. and not his separation from the employment. Because the documentation results in a decision fully favorable to Mr. Weable on the issue of his availability in January of 2008, the administrative law judge concluded that an additional hearing would not be necessary.

ISSUE:

At issue in this matter is whether Mr. Weable was unavailable for work during the period from January 6 through January 26, 2008.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Weable began working for Feaker Painting, Inc. on September 13, 2005 as a full-time painter. He was on layoff beginning in approximately mid-November of 2007. Mr. Weable was in jail from January 10 through January 15, 2008. Other than this period of incarceration, he remained available for work.

Mr. Weable was recalled to work effective February 18. He worked February 18 but did not work on February 19 or 20, because he was stranded in a storm in Des Moines. Although he was back in Cedar Rapids by 6:00 a.m. on February 21, he did not report for work. He did not return to work or contact the employer on or after February 21, 2008. Continued work would have been available if Mr. Weable had returned to work.

Mr. Weable claimed job insurance benefits for the six weeks ending March 29, 2008. He received \$347.00 for each week claimed. A portion of the benefits paid were used to offset against a prior overpayment.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Weable was available for work from January 6 through January 26, 2008. In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Mr. Weable was in jail from Thursday, January 10, through Tuesday, January 15. He was in jail two days the week ending January 12 and two days the week ending January 19. He was not in jail for the major portion of either workweek. Inasmuch as he remained available the major portion of each work week, no disqualification is imposed.

The next issue in this matter is whether Mr. Weable was separated from employment for any disqualifying reason. The administrative law judge concludes that he initiated his separation when he stopped reporting for available work. He did not report for scheduled work or contact the employer beginning February 21, 2008. He gave conflicting testimony regarding the time he arrived back in Cedar Rapids from Des Moines on February 21. He initially indicated he returned at 8:00 a.m. but later indicated it was 6:00 a.m. He also testified that he called the employer at 6:00 a.m. and went to the shop between 6:15 and 6:30 a.m.

The administrative law judge did not find Mr. Weable's testimony credible. If he was back in Cedar Rapids by 6:00 a.m., he could simply have reported to work at his normal time. If he was at the shop by 6:30 a.m., he could have remained at work. There was seemingly no reason to call the employer if he was going to work and no reason to return home from the shop if he intended to work on February 21. Based on his failure to report for work or contact the employer beginning February 21, 2008, the administrative law judge concludes that Mr. Weable voluntarily quit his employment.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for Mr. Weable's quit. Therefore, benefits are denied as of Sunday of the week in which the separation occurred, February 17, 2008. Mr. Weable has received benefits since February 17, 2008. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 18, 2008, reference 01, is hereby modified. Mr. Weable satisfied the availability requirements of the law from January 6 through January 26, 2008. He voluntarily quit his employment with Feaker Painting, Inc. for no good cause

attributable to the employer. Benefits are withheld effective February 17, 2008 and until such time as Mr. Weable has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Weable has been overpaid \$2,082.00 in job insurance benefits for the period from February 17 through March 29, 2008.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw