

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD FARLOW
Claimant

APPEAL NO: 07A-UI-10485-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GANNETT SATELLITE INFO NETWRK INC
Employer

OC: 09/30/07 R: 03
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Gannett Satellite Info Network, Inc. (employer) appealed an unemployment insurance decision dated November 7, 2007, reference 05, which held that Richard Farlow (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2007. The claimant participated in the hearing. The employer participated through Toni Humphreys, Director of the Regional Toning Center and Connie Hickerson, Employer Representative. Employer's Exhibits One and Two were admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as an Imaging Specialist I working in the Des Moines, Iowa office on March 5, 2007. He accepted a job on June 26, 2007 as a full-time Regional Toning Center Manager II in Indianapolis, Indiana. The job had been negotiated with Toni Humphreys, Director of the Regional Toning Center. The employer agreed to pay \$5,000.00 for the claimant to relocate himself and his family. The employer agreed to pay the first 30 days of temporary housing for him in Indianapolis but actually paid 90 days of housing since the claimant was unable to find a short-term contract of 30 days. The claimant's pay was \$67,500.00 on an annual basis and the employer was willing to provide two planned trips for the claimant or his family to go back and forth in the transition stage. He worked from Indianapolis for approximately three months before he decided it would not work for him.

The claimant never moved his family to Indianapolis and sent Ms. Humphreys an email dated September 26, 2007. He told the employer that he had been advised not to try to sell his home

at the current time. He clarified his request to work remotely from Iowa for one week each month, as well as going home to Iowa on Friday afternoons and returning on Monday mornings. The claimant stated that he would like the last week in October 2007, the week of Thanksgiving and the week of Christmas. He further stated that he understood if the "remote work" would not work and that he did not want to leave the employer in a bad situation. He added that "I would want to check into a position in Des Moines if there is one, but I would need to work days or the move back would not accomplish the ability for me to be with my family which is the whole point." He concluded his letter by stating that he "can stay in Indy through October but would want to be home after that if we can't work something out." Ms. Humphreys had to contact management to inquire about the claimant's demands. There were no openings in the Des Moines office and she advised him that they had accepted his resignation as of September 27, 2007.

The claimant filed a claim for unemployment insurance benefits effective September 30, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit his current employment contract by sending an email to the director of the regional training center on September 26, 2007, which included contract modifications. The email detailed his request to work remotely from Iowa instead of the employer's facility in Indiana. The employer accepted the email as the claimant's resignation effective September 27, 2007. Contrary to the employer's testimony, the claimant testified at the hearing that it had been a verbal agreement that he could always move back to Iowa if things did not work out in Indianapolis. However, this was not part of the written employment contract that he accepted and signed. Additionally, he could not adequately answer why he would not have this significant term included in the written contract. His answer that he "trusted Toni" does not mean much since the other terms of the contract were finalized in writing. Furthermore, his own email confirms that not to be the case when he states that he would want to "check into a position" as opposed to returning to his previous job. He concludes the email by stating that he "can stay in Indy through October but would want to be home after that if we can't work something out." This statement confirms the claimant's refusal to work in his current employment contract and that there is something to work out in order for him to remain an employee. There was continuing work available in Indianapolis, Indiana had the claimant wanted to continue in his current employment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. He has not satisfied that burden and 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 unemployment insurance decision dated November 7, 2007, reference 05, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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 \$610.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs