

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLINT M SMITH
Claimant

APPEAL NO: 08A-UI-00015-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

OC: 01/07/07 R: 03
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Millard Refrigerated Services, Inc. (employer) appealed a representative's December 19, 2007 decision (reference 14) that concluded Clint M. Smith (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 January 16, 2008. The claimant participated in the hearing. Kevin VanAsten appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on February 25, 2007. He worked full time as a checker on the night shift in the employer's cold storage warehouse and distribution business. His last day of work was the shift that began the evening of November 23, 2007.

The claimant's shift was to run from 8:00 p.m. until approximately 6:30 a.m. on the morning of November 24. However, the claimant clocked out and left at about 1:40 a.m. The reason he left was that he had become frustrated with his supervisor, who had questioned the claimant's lack of work speed, saying he "needed to see some work out of" the claimant. The claimant felt the supervisor was unfairly "hassling" him to go faster when he was working as fast as possible. The claimant would have preferred to speak to the night manager on duty rather than just leaving, but that person was on vacation. He did not attempt to contact any other manager or the general manager, Mr. VanAsten, who was on call and who could have been reached had the claimant gone into the administrative office which was staffed all night and indicated he needed to speak to a higher supervisor. Rather than doing this, the claimant left without an indication of his intention.

The following morning the claimant did return sometime after 10:00 a.m. to discuss being returned to work. Mr. VanAsten was present, but a decision was made to wait until the night supervisor returned from vacation, so the claimant came back in for a meeting on November 26. At that time the employer determined not to allow the claimant to return to his employment due to his walking off the shift without notice in conjunction with the fact that he had nearly exhausted all of his attendance points.

The claimant established a claim for unemployment insurance benefits effective January 7, 2007. He filed an additional claim effective December 2, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$760.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, leaving work rather than performing the assigned work is considered to be a voluntary quit, particularly where nothing is said about leaving because of unavailability of other management with whom to speak. 871 IAC 24.25(27); Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). During the hearing the claimant asserted that a further reason why he walked off the job was that he was concerned that the supervisor might "put his hands on him." The claimant did not express this concern to the employer's other management either on November 24 and November 26, nor could he provide specifics as to why he might have had that concern during his shift that night; the administrative law judge does not find the claimant's assertion as to this being a significant factor in his decision to leave to be credible. While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

Iowa Code § 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 representative's December 19, 2007 decision (reference 14) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 24, 2007, 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. The claimant is overpaid benefits in the amount of \$760.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs