IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRADLEY C BARRETT
Claimant

CHECK INTO CASH OF IOWA INC
Employer

APPEAL NO. 13A-UI-03238-MT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/10/13
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 7, 2013, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 12, 2013. Claimant participated. Employer participated by Kathy Bormann, District Manager. Exhibit One was admitted into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 3, 2013. Claimant told employer he was going to quit so as to move back to West Virginia. Claimant was having problems finding affordable housing. Claimant found a place to live on February 6, 2013. Claimant informed employer that he had housing. Claimant indicated he was willing to continue working. Employer asked claimant for a solid commitment on whether he was staying or going. Claimant became upset because he thought that he was already replaced. Employer asked claimant to show for work on February 7, 2013. Claimant did not return to work and instead left for West Virginia. Continued work was available if claimant had not left for West Virginia.

Employer did not participate at fact finding.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he moved to a new locality. This is a personal reason for a quit. Work was still available if claimant had not left for West Virginia. Claimant abandoned his job by not working all the days offered. This is a quit for personal reasons. Benefits withheld.

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.

871 IAC 24.25(2) provides:

> Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (2) The claimant moved to a different locality.

The next issue concerns an overpayment of unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

> 7. Recovery of overpayment of benefits.
>
> a. 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.
>
> b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.
>
> (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

> as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment is waived because employer failed to participate at fact finding.

DECISION:

The decision of the representative dated March 7, 2013, reference 01, is reversed. Unemployment insurance benefits are 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 overpayment is waived.

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Marlon Mormann
Administrative Law Judge

_____
Decision Dated and Mailed

mdm/pjs