

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD J BREUER
Claimant

APPEAL NO. 11A-UI-00977-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JIM MUDD ADVERTISING INC
Employer

OC: 12/05/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 24.25(29) – Anticipated Layoff
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated January 14, 2011, reference 02, that held the claimant was forced to quit with good cause on November 30, 2010, and that allowed benefits. A hearing was held on February 24, 2011. The claimant submitted a written statement. Wendy Jermier, HR Manager, and Frank Seng, CFO, participated for the employer. Claimant Exhibits A, B, and C and Employer Exhibit 1 were received as evidence.

ISSUES:

Whether the claimant voluntary quit with good cause attributable to the employer.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant started work as a full-time pilot for the employer beginning March 27, 2006. The claimant received information that the employer was contemplating a sale of the company airplane. The claimant called CFO Seng in October 2010 requesting to be fired, but Seng declined to do so, as the company plane had not been sold.

On November 22, the claimant e-mailed the employer he was separating from the company effective November 30 due to the anticipated sale of the company plane. The employer did not request the resignation and the claimant could have continued his employment up to the sale date of January 2, 2011.

The claimant was unavailable for the hearing, but he submitted a statement with documents as evidence on his behalf. The claimant has received unemployment benefits on his claim.

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.

871 IAC 24.25(29) provides:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

The administrative law judge concludes that the claimant voluntarily quit without good cause attributable to his employer when he resigned effective November 30, 2010 in anticipation of a layoff.

While the claimant reasonably believed that he would be laid off when the company plane was sold, the employer did not request him to resign or otherwise end his employment on November 30. There is no evidence that a sale date had been set such that either party knew when the layoff might occur. The employer could have continued to use the claimant's services on and after his resignation. The claimant was not forced to resign.

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.

Since the claimant has received benefits on his claim, this issue is remanded to Claims for a decision.

DECISION:

The department representative's decision dated January 14, 2011, reference 02, is reversed. The claimant voluntarily quit without good cause attributable to the employer effective November 30, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw