

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL INGRAM
Claimant

APPEAL NO. 08A-UI-02379-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNTRYSIDE RV AND TRAILER
Employer

**OC: 03/07/08 R: 02
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 7, 2008, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 25, 2008. The parties were properly notified about the hearing. The claimant was not available to take the phone call at the time of the hearing and failed to participate in the hearing. Michael Brown participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from January 22 to February 1, 2008. He was informed and understood that under the employer's work rules, employees were not to report to work after using alcohol or drugs.

On the morning of January 31, 2008, an employee entered a camper that the claimant was in and smelled the odor of marijuana smoke in the trailer and on the claimant's breath. Two other employees made the same observations and additionally noticed that the claimant appeared impaired because he hooked up a battery improperly, his eyes were bloodshot, and he seemed confused. The claimant must have smoked marijuana some time that morning either before he reported to work or while on duty. The employees reported what they had observed to the owner of the business, Michael Brown.

On February 1, 2008, Brown confronted the claimant about the reports he had received from employees. The claimant insisted that he had smoked any marijuana. Brown told the claimant to come into work on Monday, February 4 and Brown would let him know whether he still had a job or not. The claimant did not report to work on February 4 and did not have any further contact with the employer. The claimant voluntarily quit employment after being confronted about his use of marijuana.

The claimant filed an additional claim for unemployment insurance benefits effective February 3, 2008. He filed for and received a total of \$654.50 in unemployment insurance benefits for the weeks between February 3 and March 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The evidence establishes the claimant was given a chance to continue in employment if he had reported to work on February 4 as he was instructed. He did not do so, and therefore, voluntarily quit employment without good cause attributable to the employer.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective February 3, 2008, and was overpaid \$654.50 in unemployment insurance benefits for the weeks between February 3 and March 15, 2008.

DECISION:

The unemployment insurance decision dated March 7, 2008, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise

eligible. The claimant was overpaid \$654.50 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css