

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN J HENNING

Claimant

CEI EQUIPMENT COMPANY INC

Employer

APPEAL NO: 10A-UI-07365-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/04/10

Claimant: Respondent (4)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(28) – Quit After Reprimand
871 IAC 24.25(38) – Resignation/Discharge
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 12, 2010, reference 01, that held the claimant was not discharged for misconduct on April 1, 2010, and benefits are allowed. A telephone hearing was held on July 12, 2010. The claimant did not participate. Karen Gaddis, CFO, participated for the employer.

ISSUES:

Whether the claimant voluntarily quit without 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 witness, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time painter from August 12, 2008 to April 1, 2010. The employer issued claimant a written warning on April 1 that he received and signed. The claimant responded by giving two-week notice he was quitting employment. The employer accepted his resignation immediately and the claimant left work rather than being allowed to work the notice period.

The claimant failed to respond to the hearing notice. The claimant has received benefits on his unemployment 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(28) and (38) provide:

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:

(28) The claimant left after being reprimanded.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The administrative law judge concludes the claimant voluntarily quit without good cause attributable to his employer due to a written reprimand on April 1, 2010, but the employer discharged him that day that makes him eligible for benefits from his last day of work to the end of his two-week notice period, April 15.

The claimant gave notice of quitting after receiving a reprimand that moved the employer to accept his resignation immediately rather than allow him to work the two-week notice period. The claimant is allowed benefits for the two weeks ending April 17, and is then disqualified.

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 after his disqualification date of April 17, 2010, the issue of an overpayment is remanded to Claims for a determination.

DECISION:

The department decision dated May 12, 2010, reference 01, is modified in favor of the employer. The claimant voluntarily quit without good cause due to a reprimand on April 1, 2010, but he was terminated on that day and not allowed to work his two-week notice period. Benefits are allowed the claimant from the April 1 termination date to his proposed quit date through April 17. Benefits are then denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css