

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER T DEVIVO
Claimant

APPEAL 17A-UI-12986-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**OC: 11/19/17
Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 8, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2018. Claimant participated. Employer participated through human resources generalist Kristen Regenwether, transportation maintenance supervisor Richard Dickey, and regional transportation manager Mike Peat. Official notice was taken of the administrative record with no objection.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mechanic from May 19, 2016, and was separated from employment on April 12, 2017, when he quit.

On April 12, 2017, claimant accepted a job with a new employer, Irish Hill Farm. After claimant accepted the job with Irish Hill Farm, he called Mr. Dickey and told him he was coming to pick up tools and he was not going to work for the employer anymore. Claimant needed his tools to perform his job duties. Claimant did not tell the employer he was quitting because he was being harassed at work. Mr. Dickey accepted claimant's resignation. Later on April 12, 2017, claimant picked up his tools from the employer. The employer had work available for claimant had he not quit. Claimant started working for Irish Hill Farm on April 19, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify claimant from receiving benefits, claimant did leave in order to accept other employment with Irish Hill Farm and did perform services for the subsequent employer (Irish Hill Farm). Accordingly, benefits are allowed and the account of this employer (FAMILY DOLLAR SERVICES INC) shall not be charged.

DECISION:

The December 8, 2017, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the employment in order to accept other employment. Benefits are allowed, provided claimant is otherwise eligible. The account of the employer (FAMILY DOLLAR SERVICES INC, account number 310173-000) shall not be charged.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:

<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>