

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWSON CHADWICK
Claimant

APPEAL NO: 15A-UI-04442-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLIMATE ENGINEERS INC
Employer

OC: 03/15/15
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 8, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 17, 2015. The claimant did not participate in the hearing as he is incarcerated. The hearing was rescheduled three times in an attempt to accommodate the claimant's situation but because there is no end date for his incarceration at this time the administrative law judge proceeded with the hearing and the claimant submitted a written statement. Peter Watson, Vice-President/Operation Manager and Erik Lewis, Operations Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time painter for Climate Engineers from January 23, 2012 to March 9, 2015. He voluntarily left his employment by removing his personal belongings from the shop and walking off the job.

On March 9, 2015, the claimant went in to the employer's premises and removed his personal items. He returned later that morning and took a delivery to Iowa City and was back at the shop by 9:30 a.m. At that point he was instructed to take his vehicle to the Shaver Ridge shop and finish his day there but the claimant never showed up. The three employees the claimant reported to all tried to contact him on his company cell phone but he did not answer any of those calls. Painters Nate Shirley and Danan Ary told the employer that on March 6, 2015, the claimant told them he was "tired of (the employer's) crap" and he was going to quit. Finally, Vice-President/Operations Peter Watson called the claimant and left him a voice mail instructing him to return all of his company property including his gas card, phone and lap top. The claimant went to the employer's location March 11, 2015, and returned those items.

The claimant has claimed and received unemployment insurance benefits in the amount of \$416.00 for the week ending April 4, 2015.

The employer participated personally in the fact-finding interview through the statements of Vice-President/Operations Manager Peter Watson.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

After telling two other painters whom he supervised on March 6, 2015, he was going to quit his job with the employer, the claimant removed all of his personal belongings from the employer's premises, made a delivery and returned, but then failed to report to the Shaver Road shop as directed. He did not communicate with the employer about his absence but instead simply left without notifying the employer of his plans to do so. That incident, coupled with the claimant's statements to the other painters and his behavior in cleaning out his personal items from the employer's location, indicate an intention to voluntarily quit his job and an act carrying out that intention. Consequently, the administrative law judge concludes the claimant voluntarily quit his job without good cause attributable to the employer. Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

- (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the

dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Vice-President/Operations Manager Peter Watson. Consequently, the claimant's overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$416.00 for the week ending April 4, 2015.

DECISION:

The April 8, 2015, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer participated in the fact-finding within the meaning of the law. The claimant is overpaid benefits in the amount of \$416.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs