

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY A BURNETT
Claimant

APPEAL NO. 13A-UI-04468-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

SONAC USA LLC
Employer

OC: 03/17/13
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Sonac USA, L.L.C filed a timely appeal from a representative's decision dated April 5, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant did not voluntarily quit but was discharged by the employer under non disqualifying conditions. After due notice was provided, a hearing was held in Dubuque, Iowa on June 25, 2013. Mr. Burnett participated personally. The employer participated by Mr. Jim Schreiber, Vice President Human Resources; Mr. Roy Goodenow, Plant Superintendent and Mr. Kent Fuglsang, Plant Director. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant quit employment with good cause attributable to the employer.

FINDINGS OF FACT:

Ricky Burnett was employed by Sonac USA, L.L.C. from October 25, 2010 until March 7, 2013 when his verbal resignation was accepted. Mr. Burnett was most recently employed as a full-time bagger operator and was paid by the hour. His immediate supervisor was the plant superintendent, Roy Goodenow.

Mr. Burnett's employment with Sonac USA, L.L.C. came to an end on March 7, 2013 when the employer accepted what they reasonably believed to be his verbal resignation that had been given to Roy Goodenow on March 6, 2013.

On March 6, 2013, Mr. Burnett stated to the plant superintendent that if not given a promotion to a lead foreman position the claimant would take a job with a gun manufacturer in Clinton, Iowa. Mr. Burnett had had a number of conversations with Mr. Goodenow about the possibility of his promotion and Mr. Burnett made these statements on March 6, 2013 in response to Mr. Goodenow's statement that the company would also be interviewing outside candidates for the lead foreman position.

Mr. Burnett's statements were brought to the attention of the company's vice president of human resources and the employer concluded that Mr. Burnett's intention was to quit if he did not get the promotion. When the promotion was given to another candidate, the employer informed Mr. Burnett of that fact and the employer also informed Mr. Burnett that that day, March 7, 2013 was his final day. Because the employer had concluded that he had quit employment. Mr. Burnett responded, "Ok." The claimant then asked about the previous year's bonuses and whether they were still payable to him. The claimant and Mr. Goodenow cleaned out the claimant's locker. The claimant did not argue that he did not quit employment and did not bring the matter to the attention of the company's human resource department.

Mr. Burnett had made application for new employment with the gun manufacturer in Clinton, Iowa during the period in question but subsequently was not hired for the position.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes whether claimant quit or was discharged. Based upon the claimant's statement indicating that he had new employment and would take the new employment if he did not get a promotion and the claimant's failure to strongly protest the employer's acceptance of his resignation, the administrative law judge concludes that Mr. Burnett quit employment and was not discharged by 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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of an intention to quit due to intolerable or detrimental working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee, Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005).

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 is 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).

In this matter Mr. Burnett had a strong desire to be promoted within the company and made numerous inquiries about the possibility of being promoted to the lead foreman position that he had applied for. The claimant initially believed that he was a good candidate for the position but was told on March 6, 2013 that the company was also going to be considering outside applicants. At that time Mr. Burnett stated that if he did not get the foreman's position he would leave to accept specific employment with another employer in Clinton, Iowa.

Based upon the specific nature of Mr. Burnett's statements, the employer concluded that Mr. Burnett would leave if he did not get the promotion and informed the claimant on March 7, 2013 that he did not get the promotion and that the company considered that he was quitting employment. Mr. Burnett did not protest the employer's statements or decision and instead stated, "Ok" and asked about whether previous bonuses would still be available to him. His conduct is consistent with an intention to voluntarily leave employment. Claimant did not disagree or go to the company's human resource department or take any other action to preserve his employment. The administrative law judge thus concludes that Mr. Burnett relinquished his position with the company.

While the claimant's reasons for leaving were undoubtedly good from his personal viewpoint, they were not good cause reasons attributable to the employer. The employer made a management decision to hire a different person for the lead foreman's job. This, in and of itself, did not provide Mr. Burnett good cause for leaving attributable to the employer.

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.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly the administrative law judge will remand the matter to the Claims Division for determination as to whether there has been an overpayment, the amount of the overpayment and whether the claimant will have to repay the benefits.

DECISION:

The representative's decision dated April 5, 2013, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The matter is remanded to the Claims Division for investigation and determination of the overpayment issue.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs