

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROME M DALE
Claimant

APPEAL NO. 17A-UI-08486-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWIN CITY TANNING WATERLOO LLC
Employer

OC: 07/23/17
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 11, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on July 5, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on September 7, 2017. Claimant Jerome Dale participated. Jim Grove represented the employer and presented additional testimony through Rusty Truax and Kris McCarthy. Exhibits 1 through 15 were received into evidence.

ISSUES:

Whether Jerome Dale separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether Mr. Dale was overpaid benefits.

Whether Mr. Dale must repay benefits.

Whether the employer's account may be assessed for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jerome Dale was employed by Twin City Tanning Waterloo, L.L.C. on a full-time basis from January 2015 and last performed work for the employer on June 30, 2017. Mr. Dale began the employment as a production worker. In June 2016, Mr. Dale was promoted to Floor Supervisor. Raphael Perez, Production Manager, was Mr. Dale's immediate supervisor. Mr. Perez reported to Rusty Truax, Plant Manager. Mr. Truax reported to Jim Grove, President.

On June 30, 2017, Mr. Truax sent Mr. Dale home early, following a verbal dispute about placement of a guard rail. Mr. Dale objected to the Mr. Truax's decision to place the safety guard rail in a particular spot. When Mr. Dale became loud and disruptive in voicing his objection, Mr. Truax directed him to calm down or go home. When Mr. Dale continued in the

same manner, Mr. Truax again directed him to calm down or go home. Mr. Dale said, "Fine, I'll go home." Mr. Truax did not tell Mr. Dale that he was discharged or fired. Rather, Mr. Truax expected Mr. Dale to return to work the next day. Before Mr. Dale left the workplace, he stopped by the office of Kris McCarthy, Controller. Ms. McCarthy was busy with another matter at the time. Mr. Dale told Ms. McCarthy, "Consider this my two-week notice." Mr. Dale then walked out. Mr. Dale clocked out at 2:11 p.m. and then left the workplace. Mr. Dale's shift would ordinarily have ended sometime between 4:00 p.m. and 6:00 p.m.

Mr. Dale did not return to the employment. Mr. Dale was next scheduled to work on Friday, July 1, Monday, July 3 and Wednesday, July 5. When Mr. Dale was absent those three consecutive days without notice to the employer, Jim Grove, President and owner, decided to deem the employment done. Mr. Dale was aware that he, at minimum, needed to give notice to Mr. Perez prior to his shift if he needed to be absent. The employer's written attendance policy deemed three consecutive no-call/no-show absences to be a voluntary quit. The employer had provided Mr. Dale with a copy of the attendance policy at the start of his employment.

At 6:00 p.m. on July 5, Mr. Dale sent a text message to Mr. Grove. Mr. Dale initially asserted that he had been discharged from the employment. Mr. Dale went on to rehash the June 30 disagreement. By the end of the text message exchange, Mr. Dale stated that he wanted nothing further to do with the employer.

Mr. Dale's rash decision to quit the employment was in keeping with Mr. Dale's prior similar workplace outbursts and behavior.

Mr. Dale established a claim for unemployment insurance benefits that was effective July 23, 2017. Mr. Dale has received \$2,730.00 in benefits for the seven weeks between July 23, 2017 and September 9, 2017. Twin City Tanning Waterloo is Mr. Dale's sole base period employer.

On August 10, 2017, a Workforce Development claims deputy held a fact-finding interview to address Mr. Dale's separation from the employment. Kris McCarthy represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25(28) provides:

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.

Iowa Admin. Code r. 871-24.25(4) provides:

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes that Mr. Dale voluntarily quit the employment by giving notice on June 30, 2017 of his intent to quit the employment and by thereafter being absent for three consecutive work days without proper notice to the employer. The weight of the evidence fails to support Mr. Dale's assertion that he was discharged from the employment. The evidence in the record establishes that Mr. Dale was prone to inappropriate outbursts and inappropriate behavior in the workplace. The weight of the evidence establishes that it was obvious to all present on June 30, 2017 that Mr. Truax provided Mr. Dale with a choice of communicating appropriately or going home early and that Mr. Dale elected to go home early. The weight of the evidence indicates that Mr. Dale made the additional rash decision of announcing his quit before he left the workplace. The weight of the evidence establishes that Mr. Dale had calmed enough by the evening of July 5 to finally initiate contact with the employer. Even then, Mr. Dale wanted to continue the June 30 disagreement, and again reiterated his desire to have no further contact with the employer. Before the contact on the evening of July 5, 2017, the employer had already reasonably concluded that Mr. Dale had quit the employment.

Mr. Dale voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Dale is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Dale must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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) and (b).

Mr. Dale received \$2,730.00 in benefits for the seven weeks between July 23, 2017 and September 9, 2017, but is disqualified for those benefits through this decision. Accordingly, Mr. Dale is overpaid \$2,730.00 in benefits for the seven weeks between July 23, 2017 and September 9, 2017. Because the employer participated in the fact-finding interview, Mr. Dale is required to repay the overpayment. The employer's account is relieved of liability for benefits, including liability for benefits already paid to the claimant.

DECISION:

The August 11, 2017, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,730.00 in benefits for the seven weeks between July 23, 2017 and September 9, 2017. The claimant must repay the benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs