

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE C JONES
Claimant

APPEAL NO: 06A-UI-08676-LT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CLO LARSON MANUFACTURING CO
Employer

**OC: 07-16-06 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 17, 2006, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on September 14, 2006. Claimant did not participate. Employer participated through Brad Worall and John Datema.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or was discharged for reasons related to job misconduct.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time operator from November 2005 through June 30, 2006 when he quit. He called employer on June 21 and left a message on his supervisor's voice mail with a time and date stamp of 5:25 p.m. for the shift that starts at 3:45 p.m. John Datema, Supervisor, returned the call and left a voice mail message for claimant to call him. There was no return call to Datema on June 21 and on June 22 claimant left a message at 2:30 p.m. for Datema stating he had a chiropractor appointment at 4:00 p.m. and would not be at work. Datema knew the appointment would not last the entirety of the shift so he called claimant again and left another message asking him to call and advise Datema about whether or when he was going to work or why he cannot work. On June 26, claimant returned to work without a release, work restrictions or excuse. Employer sent him home for the evening or until he returned with an excuse for those days and release to return to work. He agreed to obtain the information but never communicated again with employer and did not return to work. Worrall and Datema never told claimant he was fired or would be fired.

The claimant has received unemployment benefits since filing a claim with an effective date of July 16, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

Since claimant did verify with employer his assumption of being fired, and did not return to work, provide medical documentation or otherwise communicate with employer, his failure to continue reporting to work was an abandonment of his job. Benefits are denied.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 17, 2006, reference 04, decision is reversed. The claimant voluntarily left 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 claimant is overpaid benefits in the amount of \$1,744.00. However, this overpayment was already addressed in appeal number 06A-UI-08675-LT.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/cs/cs