

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRUCE SAUNDERS

Claimant

APPEAL NO. 14A-UI-05469-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT

Employer

OC: 05/04/14

Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Belle/Sioux City Riverboat (employer) appealed an unemployment insurance decision dated May 21, 2014, (reference 01), which held that Bruce Saunders (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 17, 2014. The claimant participated in the hearing. The employer participated through Donna Willems, Human Resources Business Partner.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time line cook from March 16, 2013, through April 28, 2014. He voluntarily quit because he felt the job was too physically demanding. The claimant had no work restrictions on file and his job duties required that he lift 50 pounds occasionally. He was also required to do regular lifting, climbing, stooping, kneeling and crouching. There were no documented complaints in his file and the employer was unaware of any medical problems he was having.

The claimant filed a claim for unemployment insurance benefits effective May 4, 2014, and has received benefits after the separation from employment in the amount of \$965.00. Human Resources Business Partner Donna Willems participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). The claimant voluntarily quit his employment after April 28, 2014. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The claimant quit because he felt the work was too physically demanding. He had no work restrictions and was not advised to quit by his doctor. "Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). The claimant may have had compelling personal reasons for quitting, but the evidence does not establish that he quit for reasons that are attributable to the employer. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$965.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated May 21, 2014, (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 has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$965.00 in unemployment insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs