

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW PERKINS

Claimant

APPEAL NO. 08A-UI-03519-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC

Employer

**OC: 03/09/08 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Ryder Integrated Logistics, Inc. (employer) appealed an unemployment insurance decision dated April 1, 2008, reference 01, which held that Matthew Perkins (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 April 24, 2008. The claimant participated in the hearing. The employer participated through Bryan Mueller, Supervisor and Bill Hulme, Senior Logistics Manager. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

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 full-time material handler from July 27, 2007 through February 8, 2008. He had previously worked for the employer through a temporary employment agency. The claimant had received no formal warnings for attendance. He called in ill with a fever on February 4, 2008 and his supervisor said he was really needed and that if he came in, he could go home after additional help arrived. The claimant contends he was told he would be fired if he did not report to work. He reported to work and began his shift at 4:00 p.m. However, he was not released at 9:00 p.m., 10:00 p.m. or 11:00 p.m. Subsequently, he could not find his direct manager so told his supervisor he was going home due to illness. He left and assumed he had been fired but had not been told he was fired. The claimant did not call human resources or any member of management to ask whether he was fired. He was a no-call/no-show the next three days and on the fourth day he was terminated for job abandonment. The supervisor called the claimant on February 5, 2008 and left a message but it was never returned.

The claimant filed a claim for unemployment insurance benefits effective March 9, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by not calling or returning to work after February 4, 2008. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without giving notice to the employer in violation of company rule. 871 IAC 24.25(4). Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

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 unemployment insurance decision dated April 1, 2008, 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 benefits in the amount of \$1,662.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css