

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEREK T HARTWIG
Claimant

APPEAL NO. 13A-UI-10469-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

OC: 06/23/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 4, 2013, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on October 7, 2013, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate in the hearing. The claimant's failure to respond is noted on the APLT screen sheet, which has been copied and enclosed in the file. Official notice is taken of this and other agency records. The employer participated by Gary McCarthy, personnel manager, and Wade Torkelson, Production Supervisor. The record consists of the testimony of Gary McCarthy and the testimony of Wade Torkelson.

ISSUES:

Whether the claimant voluntarily left for good cause attributable to the employer; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures motor homes at its facility located in Forest City, Iowa. The claimant was hired on May 13, 2013, as a full-time production assembler fabricator. The claimant's last day of actual work was August 7, 2013. The claimant voluntarily quit his job on August 9, 2013.

The claimant told the employer that he was upset with being behind in his work due to absences from work on the past three out of seven work days. He did not like being questioned about this by his supervisor. He felt this was unfair and disrespectful treatment. The claimant also wanted to quit because of problems with his girlfriend. The employer did not want the claimant to quit and work was available for the claimant had he elected to continue coming to work.

The claimant received weekly benefits for the weeks ending August 17, 2013, through September 24, 2013, in the amount of \$657.00. The employer participated in the fact finding.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(21) and (23) provide:

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:

(21) The claimant left because of dissatisfaction with the work environment.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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 claimant is not eligible for unemployment insurance benefits. The claimant did not participate in the hearing and therefore there is no testimony from the claimant on why he elected to quit his job. The employer's testimony, which is deemed credible, is that the claimant had two reasons for quitting. First, he did not like being criticized for being behind on his work. Second, he had troubles with his girlfriend. The evidence from the employer is that the claimant missed three out of seven work days and was behind on his work. He was simply asked to put some more effort into getting caught up. There is no evidence of disrespect or unfairness from the employer. Troubles with a significant other are also not good cause for quitting one's job. The administrative law judge concludes that the claimant voluntarily quit his job without good cause attributable to the employer. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 section 96.3-7a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The decision of the representative dated September 4, 2013, reference 02, is reversed. Unemployment insurance benefits shall be withheld until the claimant 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 required to repay benefits originally paid to him as a result of this claim.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css