

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD J STEFFEN
Claimant

APPEAL NO: 06A-UI-08974-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDI LLC
Employer

**OC: 08-06-06 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 30, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on September 21, 2006. Claimant did not participate. Employer participated through Shelise Hall.

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 painter through October 19, 2005 when he quit according to the employer's protest form. Neither party participated in the fact-finding interview. At hearing employer's witness had no information to offer about the separation. The fact-finder (file number 42) wrote in the administrative notes, "Quit not established" and issued a decision finding the separation was a discharge and not a voluntary quitting of employment.

Claimant has received unemployment benefits since filing a claim with an effective date of August 6, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left his employment without good cause attributable to the employer.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

Obviously the fact-finding representative placed the burden of proof upon the wrong party since there is no dispute in the record that the separation was a voluntary leaving of employment. Because claimant offered no explanation for leaving the employment, he has failed to meet his burden of proof to establish a qualifying reason for the separation. 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 claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 30, 2006, reference 02, decision is reversed. Claimant voluntarily left his 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. Claimant is overpaid benefits in the amount of \$334.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/cs